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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-257

DR. REGINALD A. HAWKINS,
DR. JOHN P. STINSON and
DR. GEORGE T. NASH,

Petitioners,

v.

THE NORTH CAROLINA BOARD
OF DENTAL EXAMINERS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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THE NORTH CAROLINA BOARD
OF DENTAL EXAMINERS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

The petitioners respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina, filed in this proceeding on April 30, 1973, which affirmed the judgment and opinion of the North Carolina Court of Appeals of February 21, 1973.

OPINIONS BELOW

The judgment of the Supreme Court of North Carolina and the judgment and opinion of the North Carolina Court of Appeals are reported at 17 N.C.App.378, 194 S.E.2d 540 (1973). The judgments and opinions of the Superior Court of Mecklenburg County, North Carolina, and of the North Carolina Board of Dental Examiners are unreported. All opinions, judgments and orders are reprinted in the Appendix hereto.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3), the petitioners having asserted below and are asserting here the deprivation of rights secured to them by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. The judgment and opinion of the North Carolina Court of Appeals was entered on February 21, 1973, affirming the judgment and orders suspending the licenses of the petitioners to practice dentistry. Thereafter, on April 30, 1973, the Supreme Court of North Carolina denied certiorari and dismissed the petitioners' appeal. Mr. Chief Justice Burger extended the time for filing this petition for certiorari to and including August 7, 1973.

QUESTION PRESENTED

Whether petitioners were deprived of due process and equal protection of the law in being singled out for disciplinary proceedings by the North Carolina State Dental Examiners because of their race and their efforts to use the federal courts to challenge the racially discriminatory practices of the Dental Examiners and other State agencies involved in these proceedings.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

This case also involves the following North Carolina General Statutes:

> § 90-22. Practice of dentistry regulated in public interest; article liberally construed; Board of Dental Examiners; composition; qualifications and terms of members; vacancies; nominations and elections; compensation; expenditures by Board.—(a) The practice of dentistry in the State of North Carolina is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of North Carolina. The article shall be liberally construed to carry out these objects and purposes.
>
> (b) The North Carolina State Board of Dental Examiners heretofore created by chapter one hundred and thirty-nine, Public Laws, one thousand eight hundred and seventy-nine and by chapter one hundred and seventy-eight, Public Laws one thousand nine hundred and fifteen, is hereby continued as the agency of the State for the regulation of the practice of dentistry in this State. Said Board of Dental Examiners shall consist of six dentists who are licensed to practice dentistry in North Carolina and who possess other qualifications hereinafter specified and who shall have been elected in an election held as is hereinafter provided in which

every person licensed to practice dentistry in North Carolina and residing in North Carolina shall be entitled to vote. Each member of said Board shall be elected for a term of three years and until his successor shall be elected and shall qualify. Each year there shall be elected two members for such terms of three years each. Any vacancy occurring on said Board shall be filled for the period of the unexpired term by a majority vote of the remaining members of the Board. No person shall be nominated for membership on said Board, or shall be elected to membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice dentistry in North Carolina and actually engaged in the practice of dentistry in North Carolina and unless he has had such license to practice dentistry in North Carolina for not less than nine consecutive years prior thereto.

§ 90-24. Quorum; adjourned meetings. – Four (4) members of said Board shall constitute a quorum for the transaction of business and at any meeting of the Board, if four (4) members are not present at the time and the place appointed for the meeting, those members of the Board present may adjourn from day to day until a quorum is present, and the action of the Board taken at any adjourned meeting thus had shall have the same force and effect as if had upon the day and at the hour of the meeting called and adjourned from day to day.

§ 90-41. Revocation or suspension of license.– Whenever it shall appear to the North Carolina State Board of Dental Examiners that any dentist who has received license to practice dentistry in this State, or who has received from the said Board of Dental Examiners a certificate of renewal of license, has been guilty of fraud, deceit or misrepresentation in obtaining his license, or of gross immorality, or is an habitual user of intoxicants or drugs, rendering him

unfit for the practice of dentistry, or has been guilty of malpractice, or is grossly ignorant or incompetent or has been guilty of willful neglect in the practice of dentistry, or has had a professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this article, or has permitted the use of his name by another for the illegal practice of dentistry by such person, or has been employing unlicensed persons to perform work which, under this article, can be legally done or performed only by persons holding a license to practice dentistry in this State, or of practicing deceit or other fraud upon the public or individual patients in obtaining or attempting to obtain practice, or has been guilty of fraudulent and/or misleading statements of his art, skill or knowledge, or of his method of treatment or practice, or has been convicted of or entered a plea of guilty to a felony charge, or any offense involving moral turpitude, or has by himself or another, solicited or advertised in any manner for professional business, or has been guilty of any other unprofessional conduct in the practice of dentistry, or in the procurement of license has filed, as his own, a diploma or license of another, or a forged diploma or a forged or false affidavit of identification or qualification, the Board may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed: Provided, however, it shall not be considered advertising within the meaning of this article for a dentist, duly authorized to practice in this State, to place a card containing his name, telephone number and office address and office hours in a registry or other publication, or to place upon the window or door of his office his name followed by the word, "dentist."

The North Carolina State Board of Dental Examiners is authorized and empowered to appoint an investigator to ascertain the facts with reference to any information coming to the attention of the said Board respecting the violation of any of the provisions of this article, or of any act heretofore in effect in this State. Such investigator so appointed by the North Carolina State Board of Dental Examiners is thereupon authorized and directed to make an investigation as to any information coming to his attention with reference to the violation of the provisions of this article or any act in force at the time of said violation, and formulate a statement of charges which the said Board, upon presentation by the said investigator, shall cause to be served upon the dentist so accused. Said notice shall contain the statement of a time and place at which the charges against the accused shall be heard before the Board or a quorum thereof, which time shall not be less than ten (10) days from the date of service of said statement and notice.

At the time and place named in said notice, the said Board shall proceed to hear the charges against the accused upon competent evidence, oral or by deposition, and at said hearing said accused shall have the right to be present in person and/or represented by counsel. After hearing all the evidence, including such evidence as the accused may present, the Board shall determine its action and announce the same.

From any action of the Board depriving the accused of his license, or certificate of renewal of license, the accused shall have the right of appeal to the superior court of the county wherein the hearing was held, upon filing notice of appeal within ten days of the decision of the Board. The record of the hearing before the North Carolina State Board of Dental Examiners shall constitute the record upon

appeal in the superior court and the same shall be heard in the superior court as in the case of consent references.

STATEMENT OF THE CASE

Petitioners seek review of the decision of the North Carolina Court of Appeals, review having been denied by the Supreme Court of North Carolina, which affirmed the opinion and order of the North Carolina Board of Dental Examiners. The orders herein involved suspended the licenses of petitioners to practice dentistry for periods ranging from 60 days to 18 months. Petitioners challenge the entire proceeding before the Board of Dental Examiners from initiation through final disposition, as racially motivated and discriminatory, biased and prejudicial, and a denial of due process of law and of a fair and impartial trial by a fair and impartial tribunal. Petitioners further challenge the suspension of their licenses as punitive and violative of their rights secured by the due process and equal protection clauses of the Fourteenth Amendment.

These proceedings were instituted by the Board of Dental Examiners on July 29, 1967. The proceedings grew out of work done by the petitioners during the summer of 1966 in a federally funded dental program for preschool children which was administered by the Charlotte-Mecklenburg Board of Education. Prior to the initiation of the proceedings the petitioners had been actively involved in litigation challenging the racially discriminatory practices of the Board of Dental Examiners, the North Carolina Dental Society and the Charlotte-Mecklenburg Board of Education. Petitioners had challenged as racially discriminatory the failure rate of black dental applicants by the Board of Dental Examiners. Petitioner Hawkins had successfully challenged the constitutional provisions of the North Carolina

Dental Society, which elected the Dental Board,[1] that prohibited membership in the Society to black dentists.[2] He had also successfully challenged racially discriminatory practices of the Charlotte-Mecklenburg and the North Carolina State Boards of Education.[3]

Black and white dentists had divided along racial lines, during the spring and summer of 1966, on the method and procedure for treating low-income patients in federally funded programs. Black dentists asked that such patients be allowed freedom of choice for treatment in private dental offices. Representatives of the local Dental Society, all-white, had insisted that such patients be

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[1] This practice was changed in 1961, following the filing of *Hawkins v. North Carolina Dental Society* (See note and text at Note 2) to provide for election of Board members by all licensed dentists in the State. N.C. Gen.Stat. § 90-22. The Fourth Circuit noted in *Hawkins*, however, that "[w]hile the [statutory] amendment . . . eliminated the role of the Society as such in the process of election of examiners and made it theoretically possible for a licensed, non-member dentist to become a member of the Board of Examiners, there has been no substantial change in practical results." 355 F.2d 718 at 721.

[2] *Hawkins v. North Carolina Dental Society*, 355 F.2d 718 (4th Cir. 1966).

[3] See *Hawkins v. North Carolina State Board of Education*, 11 Race Rel.L.Rep. 745 (W.D.N.C., March 31, 1966) (three judge court holding unconstitutional State statutory provisions providing for educational expense grants, the closing of schools and exemption from compulsory school attendance laws in situations where desegregation of schools was ordered); *Polk and Hawkins v. Charlotte Park and Recreation Commission and Charlotte-Mecklenburg Board of Education* __F.Supp.__(W.D.N.C. Civ. No 2051, March 1, 1966) (unreported consent order prohibiting further racial discrimination in selection of participants in annual Shrine North Carolina-South Carolina high school football games); *Swann v. Charlotte-Mecklenburg Board of Education*, 243 F.Supp. 667 (W.D.N.C. 1965), 369 F.2d 29 (4th Cir. 1966), 311 F. Supp. 265 (W.D.N.C. 1969), 431 F.2d 138 (4th Cir. 1970), 402 U.S. 1 (1971).

treated in public clinics. This controversy led to the summer program here involved being conducted in both public clinics and private offices.

Thirty-six local dentists participated in the summer program, including all of the local black dentists. Approximately 601 patients, practically all black, were treated principally by the seven black dentists.

Immediately after bills and reports were submitted, the Board of Education, the administrative agency of the program, challenged the bills of the three petitioners. The Board of Education appointed the President of the Dental Society, which had just been successfully sued by petitioner Hawkins[4] and which under state law had no jurisdiction in the matter, to conduct a study of the program. Six local dentists were appointed by the Dental Society President, four white and two black. The committee examined generally the work of the black dentists and purportedly found discrepancies in some of the work of the petitioners and one white dentist. Three white members of the committee, however, visited the white dentist and permitted him to correct his work. The committee then suggested that the petitioners had some discrepancies in their work. The School Board attorney wrote the Superintendent "I think we did all we could to protect Dr. Reynolds [the white dentist who was permitted to correct his work] who got into this difficulty without fault on the part of the [school] board."

Petitioners sought permission to reexamine their patients with alleged discrepancies and to correct any mistake. The School Board rejected their request. They then entered an agreement with the School Board not to

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[4] Petitioners were admitted to membership in the Dental Society pursuant to court order, during the summer of 1966. These proceedings followed shortly thereafter.

be compensated with respect to any patient the board contended had a discrepancy. Following this agreement the Board of Dental Examiners subpoenaed the records of the summer program.

The Dental Examiners appointed a three-man committee, two blacks and one white. This committee generally reviewed the suggested discrepancies of the six-man committee and conducted no further inquiry. The Dental Examiners initiated charges against petitioners following receipt of the three-man committee report.

Petitioners have challenged throughout the partiality of the Dental Examiners, the three-man and the six-man committees. The committees examined generally only the work of the black dentists and none of the work done of the public clinic. The white dentist was permitted to examine and correct his work. No similar efforts were made on the petitioners' behalf. The School Board employed representatives of the Dental Society to review petitioners' work. Several of these representatives, who also served on the six-man committee, were principal witnesses against petitioner Hawkins in his proceeding against the Dental Society and in this proceeding before the Dental Board. One of these representatives, Dr. Barry Miller, employed a relative of one of the Dental Board members.

The Dental Board rejected petitioners' motions for a hearing before a fair and impartial tribunal and, after several days of hearings, filed opinions and orders with respect to each of the petitioners on July 30, 1968. The Board found that there were some discrepancies in the work of each petitioner and conditionally suspended their licenses. They were permitted to continue practice if they would attend 100 chronological clinical hours of further study. (00a)

Petitioners appealed to the Superior Court of Mecklenburg County which affirmed the findings of the Board but remanded the proceedings for entry of a proper judgment. The Court held that the Board did not have authority to conditionally suspend licenses or to direct further study by petitioners.[5] (00a)

On remand, new members had been added to the Board, one of whom had expressed an opinion about the proceedings before assuming office.[6]

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[5] The statute was amended in 1971 to permit conditional suspensions. N.C. Gen. Stat. § 90-41(a) (4) "The North Carolina State Board of Dental Examiners shall have the power and authority to . . . invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper."

[6] Board Chairman Robert H. Watson wrote the following letter to the *Charlotte Observer*, the most widely circulated paper in the area, on September 5, 1968:

"The case of the State Board of Dental Examiners against Drs. Hawkins, Nash and Stinson has been very well brought to the attention of the public through the press, radio and television. There have been many news stories, editorials and letters, but there seems to be one very important consideration which has not been stated clearly: The State Board of Dental Examiners is a group of practicing dentists charged with an important and very difficult task. They are concerned with promoting and maintaining high standards of dental practice for the betterment of the dental health of the citizens of this state. They are men of character, high morals and unquestionable honor. They are willing to make many personal sacrifices and accept the great responsibility of sitting in judgment over their own kind.

The dentists who have been disciplined by the board have appealed to the courts, and now the State Board of Dental Examiners, in a sense, stands accused of discriminatory practice, poor judgment, ignorance of the law and gross unfairness.

I suspect that the members of the dental profession and the citizens of this state know better. The appeal also attacks the "system" and the vague and indefinite state statutes concerning dental practice. Constitutionality also becomes an issue.

Without further hearings, the Board entered orders suspending the licenses of the petitioners for periods ranging from 60 days to 18 months (00a)

Petitioners again appealed. The Superior Court on September 2, 1971, remanded the proceedings for the Board to hear petitions on the disposition or order. (00a) On the second remand, the Board, again including the new member who had expressed an opinion in the matter, reaffirmed the orders of suspension. (00a)

Petitioners appealed this order to the Superior Court which conducted further hearings on petitioners' motion

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All of us in dentistry realize quite well that these are "shades of gray" questions, and this is where the integrity, morals and honor of the members of the Board of Examiners give confidence and comfort to all of us in the profession.

Dentists and physicians all over the country are aware of the fact that there are many problems that must be ironed out of the existing "examiner" system, and I am proud of the fact that our North Carolina State Board of Dental Examiners is held in high esteem nationally. Members of our Board are active in the leadership of a national group studying these problems.

In some quarters the charge of discrimination may be well based. Certainly, as for the past, none of us will deny that Negroes have been deprived of an active part in dental and medical groups simply because of their race, but not where the Board of Examiners is concerned.

Many, I suspect most, of us are ashamed of the position we have taken over the years. Perhaps an even greater shame is that we are not doing more today to resolve the problems, but if there is any group of men in dentistry in North Carolina above rendering judgment based on bias, or whose actions result from vengeance, or whose decisions are based simply on the facts as they appear, it is the members of the State Board of Dental Examiners.

If this appeal could be heard without the charge of discrimination and vengeance, the court would probably find it easier to rule. In either case, the outcome will be watched with great interest by all of us. Robert H. Watson, D.D.S. Charlotte."

that they had been deprived of a fair and impartial hearing by a fair and impartial tribunal and that the orders of suspension were punitive because petitioners had sought review of the Board's initial order. The Superior Court rejected petitioners' contentions and affirmed the Board's order. (00a)

Petitioners appealed to the North Carolina Court of Appeals which affirmed the Board's order in a decision on February 21, 1973. (00a) The Supreme Court of North Carolina denied certiorari on April 30, 1973.

REASONS FOR GRANTING THE WRIT

THE SELECTIVE AND PUNITIVE PROSECUTIONS INVOLVED HERE REQUIRE REVIEW BY THIS COURT TO PROTECT PETITIONERS' RIGHT TO A FAIR AND IMPARTIAL HEARING AND TRIBUNAL. REVIEW IS FURTHER WARRANTED TO PROTECT PETITIONERS FROM SELECTIVE AND PUNITIVE PROSECUTIONS BECAUSE OF THEIR USE OF THE FEDERAL COURTS TO ASSERT THEIR RIGHTS TO EQUAL PROTECTION OF THE LAW.

A fair trial in a fair tribunal is a basic requirement of due process.[7] This fundamental right pertains whether the proceeding is judicial or administrative or quasi-judicial in nature.[8] Indeed, fairness in administrative proceedings and before administrative tribunals is even

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[7] *Tumey v. Ohio*, 273 U.S. 510 (1927); *Re Oliver*, 333 U.S. 257 (1947); *Re Murchison*, 349 U.S. 133 (1954); *Rideau v. Louisiana*, 373 U.S. 723 (1963); *Turner v. Louisiana*, 379 U.S. 466 (1965); *Sheppard v. Maxwell*, 384 U.S. 333 (1966); *Groppi v. Wisconsin*, 400 U.S. 505 (1971); *Ham v. South Carolina*, 409 U.S. 524 (1973).

[8] *Ohio Bell Telephone Co. v. Public Utility Comm'n*, 301 U.S. 292, 304 (1937); *Goldberg v. Kelly*, 397 U.S. 254 (1970).

more essential where due process strictures may be more relaxed in the interest of expedition and administrative efficiency.

This Court has been equally concerned with punitive measures by State agencies to inhibit or to prevent persons from using the courts to enforce federally protected rights.[9]

These proceedings present a classic example of both deprivation of a fair and impartial hearing and tribunal and punitive prosecutions because of petitioners' efforts to obtain compliance by respondents and other state agencies involved here with the equal protection clause of the Fourteenth Amendment. The proceedings were tainted with unfairness and punitive motives throughout. They involve not one or two isolated instances of discrimination but rather long-continued and pervasive practices which taken together show a determined effort on the part of respondent, its alter ego, the North Carolina Dental Society and the Charlotte-Mecklenburg Board of Education to punish petitioners and other blacks because of their civil rights efforts.

Just immediately prior to the initiation of these proceedings, black dentists in North Carolina were not allowed to participate in the governance of dentistry in the State. They were denied membership in the North Carolina Dental Society by express provision of its constitution. The Dental Society selected the members of the Dental Board which licensed and supervised dental practitioners. The Charlotte-Mecklenburg Board of Education had continued to operate racially segregated schools despite the years which had passed since *Brown v. Board of Education*, 347 U.S. 483 (1954), 349 U.S. 294 (1955).

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[9] *NAACP v. Button*, 371 U.S. 415 (1963); *NAACP v. Alabama*, 357 U.S. 449 (1958); *United States v. Jackson*, 390 U.S. 570 (1968); *North Carolina v. Pearce*, 395 U.S. 711 (1969).

Petitioners, particularly Hawkins, had brought numerous proceedings in federal court challenging these continued racially discriminatory practices.[10] Petitioners had just recently been admitted to the Dental Society and had obtained an order enjoining further discrimination by the Board of Education when these proceedings were initiated. And although the method for selecting the Dental Board had been changed to permit each licensed dentist in the State to vote on its members, Chief Judge Haynesworth of the Fourth Circuit had noted that the control of the Dental Board and dentistry remained with the Dental Society and principally white dentists. *Hawkins v. North Carolina Dental Society*, 355 F.2d 718, 721 (4th Cir. 1966).

It was under these circumstances that the proceedings were begun. The School Board, shortly after the Fourth Circuit affirmed the District Court's injunctive order against it, appointed the President of the Dental Society to review petitioners' works. The Dental Society President appointed a 6-man committee, consisting of 4 whites and 2 blacks. The whites on the committee included 2 adversaries against petitioner Hawkins in his proceeding against the Dental Society. The committee, although purportedly sampling the entire summer program focused their review principally on the work of the black dentists. One white dentist was inadvertently listed as having discrepancies. Three white members of the committee went to his office and assisted him in correcting his mistakes. He was dropped from further proceedings. The committee then focused its charges of discrepancies on the work of the petitioners.

The Dental Board subpoenaed the records of the summer program and appointed a 3-man committee, consisting of a black professor from Howard, one from

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[10]See note 3, *supra*.

Meharry and a white professor from the University of North Carolina Dental School. This committee generally reviewed the work of the 6-man committee. It conducted no further review or study. It made no inquiry into the elimination of the white dentist or the letter of the School Board attorney that all steps had been taken to protect the white dentists. The 3-man committee simply adopted most of the findings of the 6-man committee. Thus the selective prosecutions were set. All white dentists had been protected. Petitioners were to face charges of discrepancies in their work before a board just recently enjoined in a suit by petitioners from continuing its racially discriminatory practices.

Petitioners immediately moved for a hearing before a fair and impartial tribunal. They made this request at appropriate stages throughout the proceedings. All such motions were rejected, although the principal witnesses against petitioners included the same adversaries of petitioners in the Dental Society proceeding and an employer of a relative of one of the Board members. This afforded the same kind of opportunity to prejudice the fact finders as considered by this Court in *Turner v. Louisiana*, 379 U.S. 466 (1965); *Parker v. Gladden*, 385 U.S. 363 (1966); *Gonzales v. Beto*, __U.S.__, 31 L.ed.2d 787 (1972). Additionally, one Board member who was later added, publicly expressed an adverse position with respect to petitioners' contentions before assuming office.[11] With the deck thus stacked, it was literally impossible for the petitioners to receive a fair and impartial hearing by an impartial tribunal. And even were there some evidence to support charges of some discrepancies in petitioners' work, the unconstitutional means employed in initiating these procedures and in the

[11] See note 6, *supra*.

hearing afforded should vitiate any support for the findings and orders. Cf. *Tumey v. Ohio*, 273 U.S. 510 (1927); *Ward v. Monroeville*, 409 U.S. 57 (1972); *NLRB v. Phelps*, 136 F.2d 562, 563 (5th Cir. 1943). Moreover, neither the Dental Board, the Dental Society nor the School Board took any steps at any time to correct the alleged discrepancies giving rise to these charges. Petitioners were denied any opportunity to correct their alleged mistakes. This further shows that the prosecutions were punitive rather than efforts of the Dental Board to protect the health and welfare of the public.

The Board initially conditionally suspended petitioners' licenses and directed that they attend 100 chronological hours of clinical training. The Superior Court held that the Board had no jurisdiction to conditionally suspend licenses. On remand, the Board simply suspended petitioners licenses for periods ranging from 60 days to 18 months. It made no additional findings that suspensions were warranted. Nor could it. The suspensions were but part of the continued effort of the Board to punish petitioners for their earlier civil rights efforts and further because petitioners had sought review of the Board's initial decision. Such punitive measures have also been condemned by this Court. *North Carolina v. Pearce. supra*; cf. *United States v. Jackson, supra.*

The North Carolina Court of Appeals failed to weigh the prejudicial conduct and effect of the respondents' practices and that of the Dental Society and the Charlotte-Mecklenburg Board of Education. The court seemed content that there was some evidence to support the charges and discrepancies in petitioners' work. The court simply concluded that the discrepancies of the white dentist was found by the Review Committee to be without merit. It failed to consider, or ignored, that 3 white members of the committee had visited the office of

the white dentist and allowed him to correct his work; that the school board attorney had written of his efforts to protect the white dentist involved in the program; that one of the members of the Board had expressed an opinion in the case before assuming office; that a relative of a Board member was employed by one of its principal witnesses; that the Dental Society President who appointed the 6-man committee was without any authority in the matter; that the review of the work of the dentist centered principally on the work of the black dentists; that the petitioners had only recently, and then only pursuant to court order, been allowed to become members of the Dental Society; that all the parties involved in these proceedings had been adversaries in other proceedings which had produced real and not imagined prejudice and bias on the part of the Dental Board and others associated with it. The Court of Appeals seemed content that the state's statute provided for a hearing before the Dental Board, apparently relying on the rule of necessity. See *Brinkley v. Hassig*, 83 F.2d 351, 356-357 (10th Cir. 1936). The rule of necessity—that statutorily designated hearing officers, although prejudiced and biased, will not be required to disqualify themselves where no other hearing officer is provided for by statute, applies, however, only where the hearing officer has exclusive jurisdiction and the administration of justice would otherwise be completely barred. The necessity exception does not apply where some other procedure is available to afford a fair hearing before a fair and impartial tribunal. See *State of Alabama ex rel. Miller v. Aldridge*, 212 Ala. 660, 103 So. 835 (1925); *Smith v. Department of Registration and Education*, 412 Ill. 332, 196 N.E. 2d 772 (1952). Here the North Carolina General Statutes expressly provided an alternative procedure by either a proceeding by the Attorney General of

the State of North Carolina, the solicitor of any Superior Court of North Carolina or any resident citizen of the State.[12]

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[12]*N.C. Gen. Stat.* §90-41.1 *Enjoining unlawful acts.* – The practice of dentistry by any person who has not been duly licensed so as to practice or whose license has been suspended or revoked, *or the doing, committing or continuing of any of the acts prohibited by this article by any person or persons, whether licensed dentists or not*, is hereby declared to be inimical to public health and welfare and to constitute a public nuisance. The Attorney General for the State of North Carolina, the solicitor of any of the superior courts, the North Carolina State Board of Dental Examiners in its own name, or any resident citizen may maintain an action in the name of the State of North Carolina to perpetually enjoin any person from so unlawfully practicing dentistry and from the doing, committing or continuing of such unlawful act. This proceeding shall be in addition to and not in lieu of criminal prosecutions or proceedings to revoke or suspend licenses as authorized by this article.

(b) In an action brought under this section the final judgment, if in favor of the plaintiff, shall perpetually restrain the defendant or defendants from the commission or continuance of the act or acts complained of. A temporary injunction to restrain the commission or continuance thereof may be granted upon proof or by affidavit that the defendant or defendants have violated any of the laws or statutes applicable to unauthorized or unlawful practice of dentistry. The provisions of the statutes or rules relating generally to injunctions as provisional remedies in actions shall apply to such a temporary injunction and the proceedings thereunder.

(c) The venue for actions brought under this section shall be the superior court of any county in which such acts constituting unlicensed or unlawful practice of dentistry are alleged to have been committed or in which there appear reasonable grounds to believe that they will be committed or in the county where the defendants in such action reside.

(d) The plaintiff in such action shall be entitled to examination of the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for the examination of the parties. (Emphasis added)

Moreover, even were there any question about N.C. Gen. Stat. §90-40.1 providing an alternative procedure, the evidence of the bias and racially discriminatory practices and motivations of the Board here, we submit, require that the decision of the Dental Board be set aside and the State required to provide some alternative procedure. *Cf. Tumey v. Ohio, supra; Re Murchison, supra.*

These proceedings present a matter of overriding public importance. They require review by this Court to insure the constitutionally protected rights of the petitioners to a fair and impartial hearing by a fair and impartial tribunal. They further require review to insure that petitioners are not punished because of their use of the federal courts to insure compliance by respondents and other state agencies with the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. If the orders of the Dental Board stand they would have the same substantial chilling affect on petitioners and other blacks throughout the country who seek to enforce their rights of equal protection as the state statutes involved in *NAACP v. Button, supra.* Petitioners civil rights efforts here as in *NAACP v. Button* must be provided "breathing space to survive." 371 U.S. at 433.

CONCLUSION

For the above reasons a Writ of Certiorari should issue to review the decision of the North Carolina Court of

Appeals and the judgment of the Supreme Court of North Carolina denying review.

Respectfully submitted,

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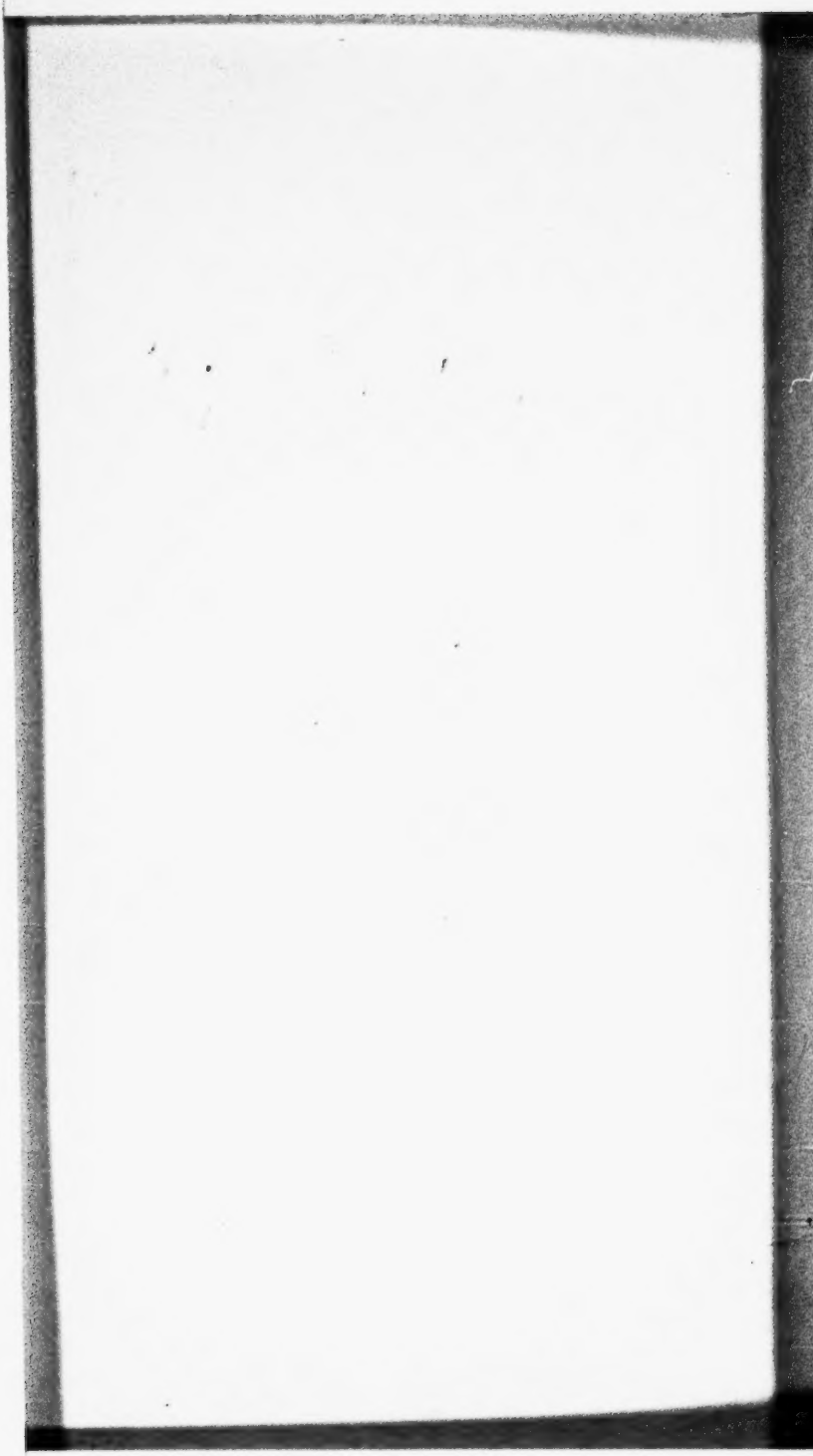

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-257

DR. REGINALD A. HAWKINS,
DR. JOHN P. STINSON and
DR. GEORGE T. NASH,

Petitioners,

v.

THE NORTH CAROLINA BOARD
OF DENTAL EXAMINERS,

Respondent.

APPENDIX TO PETITION

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APPENDIX

OPINION OF NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

SERVICE OF OPINION AND ORDER OF JULY 30, 1968, ON DR. REGINALD A. HAWKINS

STATE OF NORTH CAROLINA

To the Sheriff of Mecklenburg County, North Carolina, Greeting:

YOU ARE HEREBY COMMANDED TO SERVE THE ATTACHED OPINION AND ORDER OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS UPON THE FOLLOWING NAMED, AND THE MANNER OF YOUR SERVICE SHALL BE THE DELIVERY OF A COPY OF THE SAID OPINION AND ORDER TO:

Dr. Reginald A. Hawkins
1218 Beatties Ford Road
Charlotte, North Carolina

Issued at Morganton, Burke County, North Carolina, this 30 day of July, 1968, by the North Carolina State Board of Dental Examiners.

DR. CLINTON C. DIERCKS
Secretary-Treasurer
North Carolina State Board
of Dental Examiners (SEAL)

SHERIFF'S RETURN

Received: July 30th, 1968

Served: July 31st, 1968 by delivering a copy of this Opinion and Order, personally to Dr. Reginald A. Hawkins in Mecklenburg County, North Carolina.

DONALD W. STAHL
SHERIFF OF MECKLENBURG COUNTY,
N. C.

By: Luther A. Kearns
Deputy Sheriff

DECISION OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS (HAWKINS)

Pursuant to the terms, provisions and conditions of Article 2 of Chapter 90 and of Chapter 150 of the General Statutes of North Carolina, the above entitled proceeding came on for hearing before all members of the North Carolina State Board of Dental Examiners (hereinafter referred to as "Board") in the City of Charlotte, County of Mecklenburg, State of North Carolina. The Board was comprised of the following members: Dr. R. B. Barden, Dr. S. L. Bobbitt, Dr. W. H. Breeland, Dr. Clinton C. Diercks, Dr. Freeman C. Slaughter, and Dr. Guy R. Willis. The hearing was commenced on January 29, 1968, and was concluded on March 5, 1968.

It was stipulated and agreed by and between Dr. Reginald A. Hawkins (hereinafter referred to as "Respondent") and his counsel and the Board and its counsel

that the requirements of G.S. Section 150-20 relating to the time within which the Board's decision must be rendered were specifically waived and that the decision should be rendered within sixty (60) days after the receipt by the Board of the complete written transcript of these proceedings. The final portion of the written transcript was delivered to the Board on June 20, 1968.

This proceeding was instituted by Notice duly served upon the Respondent on the 31st day of July, 1967, advising him that sufficient evidence had come to the attention of the Board to justify the suspension or revocation of his license to practice dentistry in the State of North Carolina if such evidence were not rebutted or explained, said Notice containing a statement of the general nature of the evidence and an admonition that the Respondent had twenty (20) days within which to request a hearing before the Board.

On August 12, 1967, the Respondent filed with the Board his Request for Hearing and Response to Notice wherein it was requested, among other things that:

(1) Respondent be supplied with a more definite and certain statement of the evidence in the possession of the Board; (2) Respondent be supplied with the names and addresses of persons or entities "participating in the bringing and investigation of the charges contained in the Notice and of the names and addresses of all persons and of exhibits or documents upon whose testimony or upon which the Board intends or expects to rely in support of the charges contained in the Notice"; (3) An order issue permitting the Respondent to (a) adversely examine "all persons participating in the bringing or investigation of the charges contained in the Notice or who are expected by the Board to testify in support of the charges", and

(b) "examine all exhibits or documents expects or intends to rely in support of the charges".

A formal Notice of Hearing was duly served upon the Respondent on September 1, 1967, which contained, among other things:

(1) A bill of particulars and a more definite statement of the evidence, as requested by the Respondent;

(2) An allowance of the adverse examinations of the prospective witnesses and the examination of documents and prospective exhibits, as requested by the Respondent;

(3) The names and addresses of all persons who had participated in the investigation giving rise to the evidence submitted to the Board; and

(4) A notification that the hearing requested by the Respondent would commence in Charlotte, North Carolina, at 9:30 a.m. on September 20, 1967.

Upon motion of counsel for the Respondent the hearing was, by Order dated September 8, 1967, continued to November 28, 1967, in order to permit the Respondent to conduct the previously authorized prehearing discovery proceedings.

On September 12, 1967, the Respondent filed his Motion to Examine Documents and Response to Notice of Hearing. Subsequent thereto, all documents and prospective exhibits in the possession of the Board were made available for examination by the Respondent and his counsel in the office of the Board's counsel at Morganton, North Carolina.

On October 13, 1967, the Board commissioned Edna Ferster to take and report the examinations requested by the Respondent, and said examinations were duly conducted in Charlotte, North Carolina, on November 6, 7 and 11, 1967, during the progress of which the testimony of the following individuals was taken: Dr. Luby T. Sherrill, Dr. A. Craig Phillips, Mr. James Burch, Dr. J. H. Guion, Dr. Paul Stroup, Jr., Dr. J. H. Rehm, Dr. C. E. Sturdevant, Dr. Fleming Stone, Dr. Worth Williams, Dr. Barry Miller and Dr. H. E. Gaskins.

On November 24, 1967, the Board, upon joint motion of counsel for the Respondent and counsel for the Board, ordered the scheduled hearing continued to January 29, 1968, so that the written transcripts of the aforesaid pre-hearing examination could be prepared and delivered to the Respondent and to the Board prior to commencement of the hearing.

The evidentiary material which formed the basis for this entire proceeding was obtained from the office of the Superintendent of the Charlotte-Mecklenburg Schools by subpoena duces tecum issued December 21, 1966, by the President of the Board and served on the same day by the Sheriff of Mecklenburg County. The subpoena duces tecum was prompted by reports that had reached this Board indicating the possibility of a breach or violation of the Dental Practices Act (Chapter 90, Article 2, N.C. Gen. Stat.) by the Respondent. By the above said process, the Board secured possession of various documents, x-rays and other pertinent materials pertaining to all dentists who, during the summer of 1966, had participated in the dental treatment of qualified children enrolled in the Charlotte-Mecklenburg School System, which treatment was financed by funds made available under the Federal Elementary and Secondary Education Act. It appeared from these documents and materials

that, from an investigation and examination of many of the patients treated by the Respondent, the following discrepancies had been charged to said Respondent:

NAME OF PATIENT AND DISCREPANCY NOTED

1. Reid, Thomas
   Caries under restorations
   Amalgam bridge
   Caries not treated

2. Withers, John
   Caries under and around fillings

3. Potts, Debra
   Service incomplete
   Surfaces billed and not restored

4. Wallace, Marilyn
   Caries remaining under and around fillings

5. Carrothers, Charles
   Carries under restorations in molars and caries between teeth (bienagaral)

6. Carr, Leatrice
   Service not complete

7. Caldwell, Hazel
   Caries remaining under and around fillings

8. Stafford, Ricky
   Decay under restoration in upper right per. molar
   Re-do fillings
   All services should be reworked

9. Hall, Herbert
   Decay under upper dec. molar restorations
   Caries remaining under and around fillings
   Billed for more surfaces than filled

10. McIllwain, Byron
    Decay under upper right 1st molar filling
    Decay under lower left 1st. molar

11. Thompson, Melvin
    Caries under upper left 2nd. molar
    Caries under lower left 1st. molar
    Caries under upper right 1st. molar
    Caries under lower right 1st. molar

12. Singley, Anita
    If x-rays taken why restore the two lower dec. second molars
    (24.00) Caries maxillary upper 1st molars

13. Cooper, Anthony
    Five defective fillings by examination
    Two of five fillings shown on x-ray
    All service inadequate

14. Sanders, Norris
    Fillings broken out
    Poor restorations on lower left 1st and 2nd dec. molars.

15. Knox, Survella
    Amalgam bridges
    Caries under fillings

16. Lee, Eric
    Charged for three rather than 2 surface restorations (at least 3 teeth)
    (Overcharged)

17. Funderburke, Reginald
    Complete work as charged
    Re-do work as marked on bill

18. Sanders, Mary
    No work done-billed for $94.00

19. Rivens, Carolyn
    Caries under restorations

20. Whitley, Phyllis (No Authorization)
    Billed for 6/6 two surfaces-restored only one

21. Payne, Allan
    Question number of surfaces restored

22. Sloan, Daryl
    Amalgam bridge-lower left
    Decay under upper molar fillings
    Overcharges
    Caries under and around fillings
    Most dec. teeth should have been ext. rather than filled

23. Grier, Marvin
    Caries not restored

24. Sloan, Ernest
    Fillings placed in infected teeth
    All work to be redone

25. Burton, Flora
    Caries not removed under restoration
    Caries not treated

26. Henderson, Phyllis
    Number of restorations not clear
    Number of extractions not clear

27. White, Sharyl
    Restoration fractured
    Caries under restorations
    Caries not treated

28. Carr, Dewana
    Caries lower left 1st. molars
    Need additional x-rays

29. Barnes, Cavin
    Caries under restorations

30. Holmes, Marie
    1 Surface restoration billed-not filled
    Service inadequate

31. Brice, Jerry
    Pictures not clear
    Question 6 ant. temporary fillings-see photos if possible

32. Soan, Cassandra
    Caries under restorations on four dec. molars

33. Moore, Cathey
    Billed for restorations not filled
    Restoration fell out
    Poor restorations

34. Gaynne, Larry
Caries under fillings

35. Ross, Darryl
Amalgam bridges
Caries not treated
Caries under restorations
Worked billed for incomplete

36. Hall, Earl
Caries remain under and around fillings-some need to be replaced.

37. White, Vincent
Caries remain under and around fillings

38. Thompson, James
Lower right 2nd. T. Molar needs to be extracted.

The Board determined that further examinations and evaluations should be conducted and, accordingly, requested Dr. Herman E. Gaskins Professor of Operative Dentistry at Howard University School of Dentistry; Dr. Fred C. Fielder, Professor of Operative Dentistry at Meharry Medical College; and Dr. Clifford M. Sturdevant, Chairman of the Department of Operative Dentistry and Professor of Operative Dentistry at the University of North Carolina School of Dentistry, to examine and evaluate all post-operative x-rays and chartings of the above named patients (as well as conduct clinical examinations when possible) in relation to the discrepancies above listed and report their collective findings to the Board. These gentlemen complied with the request of the Board and, thereafter, submitted a report containing the following pertinent findings:

DISCREPANCIES

The Charlotte Review Committee of six dentists interpreted discrepancy to mean one or more of the following (see page 2 of the Rough Draft Report of this Committee):

Discrepancy # Discrepancy

1. Billing for work not done.
2. Dental decay left under fillings.
3. Decayed surfaces left in a tooth which had been filled.
4. Bridging of amalgam filling across two adjacent teeth and/or other other unaccepted dental treatment.
5. Stating that dental care was complete when evidence revealed that care was incomplete.

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREPANCIES
Dr. Hawkins	Hall, Herbert	Billed for untreated surfaces		#1
	Sanders, Mary	No work done. Was billed $94.00		#1
	Stafford, Ricky	Billed for untreated surfaces		#1
	Knox, Survella	Amalgam bridge		#4
	Sloan, Ernest	Verified discrepancy as listed by Review Comm.		
	Grier, Marvin	Billing for untreated surfaces		#1

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREP-ANCIES
Dr. Hawkins	Sloan, Cassandra	Excellent example of positive caries under restorations		#2
	Holmes, Marie	Untreated virgin M caries L13 when billed for MODF		#1
	Sloan, Darryl	3 fillings listed twice on billing for $30.00 total extra. Also charged for extraction of R5 when in fact restored (by filling) R5 and billed for the filling.		#1
	Funderburk, Reginald	X-rays shows evidence of attempt to restore M of R13 and L13 at same time as filling R12 (DO) and L12 (DO). Subsequently all fillings were lost, (inside of 1½ months)		#4
	Singley, Anita	Verified discrepancy as listed by Review Comm.		
	Sanders, Norris	Verified discrepancy as listed by Review Comm.		
	Thompson, James	Verified discrepancy as listed by Review Comm.		

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREP-ANCIES
Dr. Hawkins	Ross, Daryl	Billing for untreated surfaces (D of each 2nd max. dec. molar). Amalgam bridges		#1, 4
	Reid, Thomas	Fillings fractured away on distal of L4 and mesial of L5. Decay left on distal of L13 and mesial of L14.	(Deciduous molars missing by time of our clinical exam.)	#4, 5
	Moore, Cathey	Billed a D for a Do. Shallow D preparation on L5 resulting in loss of filling		#1, 4
	Barnes, Cavin	Billed OF for MOF on R12 and billed OF for DOF on R13		#1
	Carothers, Charles	Proximal decay on teeth "restored" by O. This proximal caries shows in x-ray to be clearly in the dentin.		#3
	Cupper, Anthony	Billed an MOF as MODF (L13)		#1
	Rivens, Carlos	Lost the maxillary right restorations inside of 1½ months	Our clinical examination verified decay under restorations	#2, 4

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREP-ANCIES
Dr. Hawkins	Carr, Dewana	Committee says "caries" under lower left first molar. We agree; also, we would add that the filling is extremely short of covering the distal gingival floor.		#2, 4
	White, Sharyl	Caries not treated when dentist claimed "all treatment completed."		#5
	Payne, Allen	Billed for untreated surfaces. Caries around fillings. Amalgam bridges between R4, 5 and R12, 13 claimed by Review Committee.	We verified an amalgam bridge between max. 1st and 2nd dec. molars. Restoration(s) gone in R12, 13 when we examined.	#1,2,4
	Carr, Leatrice	Placed an O in L4, 5 when proximal surfaces were carious. Caries on distal gingival of MOD L14.		#3, 2
	Lee, Eric	Billed for untreated surfaces.		#1

This review panel, in many instances giving the Respondent the benefit of any doubt they entertained, eliminated from consideration those discrepancies that had been charged to the Respondent as a result of his treatment of John Withers, Debra Potts, Marilyn Wallace, Hazel Caldwell, Byron McIllwain, Melvin Thompson, Phyllis Whitley, Flora Burton, Phyllis Henderson, Jerry Brice, Larry Gayne, Earl Hall and Vincent White.

The original Notice and the Notice of Hearing (containing a bill of particulars) subsequently served on the Respondent were founded upon the report submitted by the three-man review panel consisting of Drs. Gaskins, Fielder and Sturdevant.

FINDINGS OF FACT

BASED UPON THE ENTIRE RECORD HEREIN, INCLUDING TESTIMONY OF ALL WITNESSES, STIPULATIONS, DOCUMENTS AND EXAMINATIONS AND SCRUTINY OF ALL EXHIBITS, THE BOARD FINDS THE FACTS TO BE AS HEREINAFTER SET FORTH:

On June 29, 1966, the Charlotte-Mecklenburg Board of Education caused letters to be sent to dentists practicing in the Charlotte-Mecklenburg area requesting that they indicate, by return mail, whether they wished to participate in the treatment of medically indigent children during the summer of 1966 under the auspices of the Elementary and Secondary Education Act (hereinafter referred to as "ESEA"). Some thirty-six dentists, including the Respondent, made a positive response. By letter notification and reply forms, parents of children who qualified for dental treatment under the program

were given the opportunity to select the dentist with whom they wished to secure appointments for treatment of the children's teeth. Appointments were then made with the dentist, either by the parents or by school personnel who were administering the program.

Thereafter, a letter authorizing the dentist to treat a respective child was forwarded to said dentist. The Respondent saw or treated One hundred twenty-six (126) ESEA patients and relative to each patient, received the following authorization letter from the Mecklenburg County Department of Public Health, which Department was working with the Board of Education in planning and coordinating the program:

Dear Dr. Hawkins,

This letter is your authorization to treat (name of patient). You may perform routine prophylaxis, topical flouride, restorations, and extractions without further authorization. Any unusual treatment or procedure may be approved by the dental director.

All work must be completed and statement mailed before August 25, 1966.

Statements must be itemized and in duplicate.

Do not submit a statement for work to be done in the future. Bill only for completed work. Please indicate on your statement whether or not this child needs more care at this time.

Make Statement to:
Project ESEA-Title I
Charlotte-Mecklenburg Board of Education
720 East Fourth Street
Charlotte, N. C. 28202

Mail to:
Dental Director-ESEA
1200 Blythe Boulevard
Charlotte, North Carolina 28203

Call me for any clarification or confirmation.

Sincerely,

/s/ Luby T. Sherrill

Luby T. Sherrill, D.D.S., M.P.H.
Dental Director, ESEA

The Respondent, as well as all other participating dentists, was asked to indicate on his statement "whether or not this child needs more care at this time". The children who qualified for treatment in the program were from low-income families; most of them had never had any prior professional dental care. For this reason the request that the Respondent make the above mentioned indication on his statement was significant and important so that the administrators of the program could make an effort to follow up with further treatment of those children who needed it in the event additional or related program funds were available or became available for that purpose. The requested indication clearly meant a statement as to whether the condition of the teeth of the child was such as to evidence a present need for additional dental treatment.

The Respondent treated his first ESEA patient July 29, 1966; treatment of all ESEA patients was to be completed and statements mailed by August 25, 1966. In the span of time from July 29 to August 25, 1966, the Respondent saw or treated one hundred twenty-six (126) ESEA patients for which he submitted statements in the total amount of $13,488.00.

Shortly after Dr. Luby T. Sherrill, Dental Director of the ESEA program, began receiving statements from the participating dentists, for approval for payment by the office of Mr. James Burch, Director of ESEA activities, employed by the Charlotte-Mecklenburg Board of Education, he became concerned because of the amount involved in some of the statements and the large number of children being treated by a relatively few dentists. Consequently, he and two of his associates, Mr. Robert Hunter and Dr. Gunther, on August 12, 1966, visited one of the schools in which children were enrolled who had been treated under the program and made clinical examinations of the teeth of twenty-two of those children. Dr. Sherrill discovered various defects in the dental work performed on those children and discrepancies between the treatment apparently rendered and the treatment for which charges had been made. On August 12, 15, 17 and 20, 1966, Dr. Sherrill and Dr. Gunter made examinations of a total of 111 of the children who had been scheduled for treatment; of these, 84 had actually kept their appointments and bills or statements had been rendered by the dentists who had seen the respective children. Of the 84 children who had been seen by a dentist and for whom a statement was sent to the ESEA Dental Director, 21 were determined to involve discrepancies which Dr. Sherrill noted, consisting of billing for work apparently not done, leaving decay in margins around fillings, and other inappropriate or unacceptable treatment.

Dr. Sherrill conveyed his findings to Mr. James Burch; Mr. Burch, in turn, transmitted the report to Dr. Craig Phillips, Superintendent of the Charlotte-Mecklenburg Schools.

Following the report of Dr. Sherrill, the Charlotte-Mecklenburg Board of Education, through Dr. Phillips

and Mr. Burch, asked Dr. Homer Guion, of Charlotte, North Carolina, who was then President of the North Carolina Dental Society, to name a committee of local dentists to investigate all work performed by all dentists with private practices who had participated in the ESEA program during July and August, 1966. Pursuant to this request, Dr. Guion appointed the following named committee of six dentists to conduct the investigation and report to Dr. Phillips: Drs. Paul A. Stroup, Jr., J. G. Rehm, Fleming M. Stone, J. D. Martin, Barry G. Miller, and Worth A. Williams, all of Charlotte, North Carolina.

After the six-man committee was selected and had agreed to serve in the capacity requested, the following procedure was devised and followed for their investigative examinations, meetings, determination of discrepancies, and report of findings:

(1) Copies were made of all statements that had been submitted by all dentists who had participated in the program. (36 had indicated a willingness to participate; only 28 actually treated patients and submitted statements). The copies were prepared in such a manner that the letterhead or name and address of the dentist and his signature were omitted, leaving only the name of the patient, the itemization of treatment rendered and the charge therefor, and the statement thereon in response to the request for information as to whether or not the child needed further dental care or treatment. This was done by and under the supervision of Mr. James Burch; (2) The six-man committee convened at Central Piedmont College on or about October 6, 1966, for the purpose of clinically examining all of the subject children whom Mr. Burch could locate in the school system and have transported to the college.

(3) The committee used the dental facilities at the college for the purpose of conducting their examinations. The children were identified by numbered tags pinned to their clothing, and the charts upon which the examining dentist recorded their findings were numbered so as to correspond with the identification number of the child examined. The name of the child was also placed on his respective chart. On the same day, October 6, 1966, college personnel made x-rays of the teeth of the children who were examined; there were also marked with the names and identification numbers of the respective children.

(4) The charts prepared by the committee of examining dentists and the x-rays made at the college were delivered to Mr. Burch. He and his staff then correlated the charts, x-rays and copies of statements (with identification of the treating dentist deleted or omitted), and, relative to each child who had been examined by the six-man committee of dentists, placed those three items in a brown manila envelope.

Mr. Burch prepared a list of all private dentists who had previously indicated they would participate in the program and assigned a number to each one. This numerical identification list was kept in his private files. The identification number of the dentist who had treated a child was placed in one corner of the outside of the envelope containing the chart, x-rays and statement pertaining to that child.

(5) All of the envelopes or packets thus assembled were delivered to the assembled six-man committee for their joint examination and review. The Committee met a number of times and all members were present at each meeting. Mr. Burch was also present at each meeting, and

at the conclusion of each meeting he took possession of all of the envelopes or packets and retained them in his possession until the next committee meeting. At no time were the names of the treating dentists revealed or made known to the committee; identification of the dentist was solely by number.

When the committee agreed upon a discrepancy or discrepancies as to a particular child, it was noted on the outside of the envelope and that envelope was placed in a separate stack or pile. The committee decided upon and utilized the following denominations of discrepancies:

1. Billing for work not done.
2. Dental decay left under fillings.
3. Decayed surfaces left in a tooth which had been filled.
4. Bridging of amalgam filling across two adjacent teeth and/or other unacceptable dental treatment.
5. Stating that dental care was complete when evidence revealed that the case was incomplete.

(6) Through Dr. Guion, the report of the six-man review committee was communicated to Dr. Craig Phillips by letter dated October 27, 1966, the report showing, among other things:

(Board Exhibit No. 5).

(a) Of the 601 patients treated by private dentists, the committee had examined 308.

(b) The general procedure followed by the review committee;

(c) That discrepancies were found in the work of four (4) of the thirty-six (36) dentists, accounting for discrepancies noted as to 92 of the 308 children examined who were treated by private dentists;

(d) A list of the committee's interpretation of discrepancy;

(e) A notation that the treating dentists were identified only by an assigned number.

From the information noted on and contained in the envelopes, Mr. Burch compiled and assimilated the discrepancies chargeable to the Respondent who was identified as dentist Number 13. (See: Board Exhibit No. 6). This information was documented in the manner and form which has heretofore been set forth in the preamble of this decision. (Board Exhibit No. 29). The committee examined 72 of the 126 patients treated by the Respondent; discrepancies were noted as to 38 of them.

As a result of meetings and conferences involving the Respondent, his counsel, Dr. Craig Phillips, and administrative personnel concerned with the administration of the ESEA program, the Respondent accepted $6,708.00 as payment for his services.

On December 21, 1966, the Board, by subpoena, obtained possession of the records, reports, x-rays and related documents pertaining to all of the dentists who had participated in the program. Until that time, the Board had, in no way, been involved in the situation either directly or indirectly. Thereafter Drs. Clifford M. Sturdevant, Herman E. Gaskins and Fred C. Fielder were requested, by the Board, to review the report of the six-man committee, the post-operative x-rays made at the College, and all other documents or other matters relative to the four dentists who were indicated as having discrepancies in their working or billing, as well as the other material then in the possession of the Board. In response to this request, these three men met in

Charlotte, North Carolina, in early February, 1967, reviewed the committee report, examined all records pertaining to the four dentists charges with discrepancies, clinically examined 13 of the children in question, and checked random samples of the records of dentists who had not been charged with discrepancies.

Their initial report to the Board was submitted under date of February 21, 1967. (Board Exhibit No. 7). As to the Respondent, they verified twenty-five (25) of the thirty-eight (38) patient discrepancies previously reported by the committee of six. By letter dated March 6, 1967, (Board Exhibit No. 7-A) the three-man panel submitted a particularized report of their findings as to specific patients of the Respondent. (Board Exhibit No. 7-B). This documentation has heretofore been fully set forth in the preamble of this decision and is hereby fully incorporated by reference into the body of these findings of fact.

The nomenclature utilized by the Respondent for the written identification of teeth within the mouth in accordance with their relative positions was determined to be as follows: both primary dentition (decidous teeth) and secondary dentition (permanent teeth) were identified numerically on EACH SIDE of the mouth, beginning with the numeral "1" at the upper (maxillary) midline (central or medial incisor) and continuing posteriorly to the maxillary third molar through "8"; thence, on the same side of the mouth, and beginning at the lower (mandibular) midline, with the central of medial incisor being designated as "9", continuing serially and posteriorly through "16", the mandibular third molar. The side of the patients mouth involved was designated by "R" for the right side and "L" for the left side. For example,

"L-4" identified either the left maxillary first premolar in the secondary dentition or the maxillary left first molar in the primary dentition; "R-13" identified either the mandibular right second premolar in the secondary dentition or the mandibular right second molar in the primary dentition.

The various surfaces of the teeth are identified as follows:

(1) "O" represents the occlusal or biting surface;

(2) "M" represents the mesial surface, the side of the tooth toward the front center or midline of the mouth;

(3) "D" represents the distal surface, the side of the tooth toward the back of the mouth;

(4) "L" represents the lingual surface, the side of the tooth toward the tongue;

(5) "F" represents the facial surface, the side of the tooth toward the cheek or lips; this is also occasionally referred to as the buccal surface.

Hereinafter, the nomenclature for identification of teeth and the surfaces of teeth set forth above will be used rather than the descriptive words.

Relative to various of the patients of the Respondent and the matters set forth in the initial Notice and the subsequent Notice of Hearing served upon the Respondent, we find the facts to be as follows:

(1) HERBERT HALL: The three-man review panel decided to accord the Respondent the benefit of their

doubts relative to this patient and the matter was eliminated from further consideration.

(2) MARY SANDERS: Due to an apparent confusion of post-operative x-rays, it was determined by the three-man review panel that they and the initial review committee had erred relative to discrepancies pertaining to this patient. They are dismissed.

(3) RICKY STAFFORD: The Respondent (a) charged for a two-surface restoration (DO) in R-12 and placed only a one-surface (O) restoration in it, resulting in an overcharge; (b) charged for a two-surface restoration (OL) in R-6 and placed only a one-surface (O) restoration in it, resulting in an overcharge; (c) charged for a two-surface restoration (OL) in L-6 and placed only a one-surface restoration (O) in it.

(4) ERNEST SLOAN: It appears that the condition of L-12 may be the effects of internal resorption rather than infection. This matter is dismissed.

(5) MARVIN GRIER: The Respondent placed a one or, possibly, two-surface restoration (OF) in L-4 and charged for a three-surface (DOF) restoration, resulting in an overchage.

(6) CASSANDRA SLOAN: In restoring L-12 and L-13, the Respondent either wrongfully left caries in the restoration preparation beneath the filling or made improper use of calcium hydroxide as a restorative base so as to permit the same to communicate with the oral cavity which would result in a washing out of the calcium hydroxide and a recurrence of decay. Neither cavity preparation created a flat gingival floor (a basic of

child were completed was clearly erroneous or the Respondent was not professionally aware of the further nature of treatment required.

The Respondent's pre-operative x-rays were inadequate for diagnostic purposes.

(11) DARRYL ROSS: The Respondent (a) placed a two-surface (MO) restoration in R-5 and charged for a three-surface (MOD) restoration; (b) placed a two-surface restoration (DO) in R-4 and charged for a three-surface (MOD) restoration; (c) placed a two-surface (MO) restoration in L-5 and billed for a three-surface (MOD) restoration, resulting in an overcharge.

(12) THOMAS REID: The Respondent (a) charged for an LOF restoration on L-14 and left caries on the mesial (M) surface of that tooth; (b) charged for an MO restoration on L-13 and left decay on the distal (D) of that tooth. The restorations were placed as charged. The caries not treated would have been present and of such a depth as to require restorative work at the time of treatment.

The mesial portion of a restoration placed in L-5 was broken out and the distal portion of a restoration placed in L-4 was missing.

The above indicated matters are evidenced by the post-operative x-rays made October 6, 1966, and were clinically verified by the 3-man review panel.

The Respondent's statement bore the notation, "Dental Needs Completed". This was erroneous.

(13) CAVIN BARNES: The Respondent (a) charged for a three-surface (MOF) restoration on R-12 and only did a two-surface (OF) restoration; it appears the mesial surface was never prepared to receive a restoration; (b) charged for a three-surface (DOF) restoration on R-13 and only performed a two-surface (OF) restoration; it appears the distal surface was never prepared to receive a restoration, these matters resulting in an overcharge.

(14) CHARLES CAROTHERS: The Respondent placed an occlusal restoration in R-4 and left distal decay untreated on that tooth; he placed an occlusal restoration in R-5 and left mesial and distal decay untreated on that tooth. Treatment was rendered August 22, 1966, and Respondent's statement indicated "Dental Needs Completed". Proper and acceptable treatment in August would have required placement of a restoration in the distal of R-4. R-5 might have properly been temporarily treated by application of stannous fluoride, which the Respondent did.

(15) ANTHONY CUPER: We find no material discrepancy relative to this patient. Some of the patients raised here resulted from poor records on the part of the Respondent. It does concern us, however, that this patient had parts of two restorations missing when examined October 6, 1966.

(16) DEWANA CARR: The three-man review panel were of the opinion that the indication of decay under the restoration in the lower left first molar might be a calcium hydroxide base or liner and this matter was removed from consideration.

We do find, however, that the restoration placed in that tooth by the Respondent is entirely inadequate

because it is considerably short of covering and sealing the distal gingival floor, thereby leaving an opening for the ingress of caries below the restoration.

(17) SHERYL WHITE: This matter was eliminated because the three-man review panel determined that the caries indicated could have been properly treated with stannous fluoride.

(18) ALLEN PAYNE: In addition to the x-ray evidence of October 6, 1966, this patient was also clinically examined by the three-man review panel in February, 1967. The Respondent treated this child August 23, 1966.

(a) The Respondent charged for and placed an MO restoration in R-13. The cavity preparation was improper and the M portion of the restoration was lost. There was also caries or an improper application of calcium hydroxide beneath the restoration. Untreated distal decay was left in the tooth.

(b) The Respondent charged for and placed a DO restoration in R-12. The x-rays of October 6, 1966, reveal caries around the restorations and a fracturing of the occlusal restoration. Clinical examination in February, 1967, revealed the entire restoration to be missing with caries in the DO cavity.

(c) Respondent charged for a three-surface (MOD) restoration in R-5 and only placed a one-surface (O) restoration. Some indication of untreated mesial decay appears on this tooth.

(d) The mesial of an MO restoration placed in L-13 broke out. The cavity was carious.

(e) The distal of a DO restoration placed in L-12 broke out. The cavity was carious.

(19) ERIC LEE: The Respondent (a) charged for a three-surface (MOD) restoration in L-13 and only placed a one-surface (O) restoration; and (b) charged for a three-surface (MOL) restoration in R-5 and only placed a one-surface (O) restoration.

(20) LEATRICE CARR: Due to the fact that the Respondent's statement noted that, as to this patient, "Dental Needs Incomplete", we find no discrepancies.

(21) For various reasons, the discrepancies alleged as to Marie Holmes, Darryl Sloan, Cathey Moore, Survella Knox and Loria Ann Houston were removed from consideration either upon advice of counsel or recommendation of the three-man review panel.

We find that leniency and reason positively prevailed in the attitude of the six-man review committee and the three-man review panel relative to their investigation and evaluation of the matters here in question. We are of the further definite opinion that the evidence which has been presented to this Board clearly demonstrates that with respect to the patients here involved, the Respondent engaged in professional practices far below the standard acceptable in this State, much to the detriment of the Respondent, his patients, and the profession in general. It is obvious that the Respondent carelessly attempted to perform more work on more patients in a very limited period of time than he could competently manage.

CONCLUSIONS OF LAW

The North Carolina State Board of Dental Examiners, based upon the foregoing Findings of Fact, does hereby

conclude, as a matter of law, that the Respondent has been guilty of willful neglect, unprofessional conduct, and/or malpractice in the practice of dentistry in this State, all in violation of Section 90-41 of the General Statutes of North Carolina, and in the following particular respects relative to the various patients here involved and the professional practices and procedures engaged in by the Respondent as related to the Findings of Fact:

(1) RICKY STAFFORD: Charging or billing for work not done or performed constitutes unprofessional conduct in the practice of dentistry.

(2) MARVIN GRIER: Charging or billing for work not done or performed constitutes unprofessional conduct in the practice of dentistry.

(3) CASSANDRA SLOAN: The poor, substandard quality of the restoration of L-12 and L-13 is below the minimum standard acceptable within the dental profession of this State and poses such a danger to the health of the teeth and patient as to constitute willful neglect and malpractice.

(4) REGINALD FUNDERBURK: We reach the same conclusion with regards to the work performed on this patient as is set forth under the name of Cassandra Sloan, above.

(5) NORRIS SANDERS; The same conclusion set forth under the names of the two preceding patients applies to the treatment here rendered by the Respondent.

(6) JAMES THOMPSON: As to this patient, the Respondent's representation of "Dental Needs Com-

pleted" when, in fact, considerable further care was obviously needed within a very short period of time was a serious misrepresentation of the nature and extent of his treatment of the child and constituted unprofessional conduct. This is aggravated by the fact that the temporary restorations were lost or partially lost within sixty days after placement, which is indicative of willful neglect on the part of the Respondent in his practice of dentistry.

We are constrained to reject as untenable the Respondent's purported interpretation of the directive contained in the authorization letters.

(7) DARRYL ROSS: The charges or billings for professional services not performed were unprofessional conduct in the practice of dentistry.

(8) THOMAS REID: We conclude that failure to properly treat the proximal decay on L-13 and L-14 (particularly when other portions of those teeth were subjected to restorative treatment) was willful neglect in the practice of dentistry and that the misrepresentation that the dental needs of the patient were completed constituted unprofessional conduct in the practice of dentistry.

(9) CAVIN BARNES: Charging for surface restorations which were not placed in R-12 and R-13 constituted unprofessional conduct in the practice of dentistry.

(10) CHARLES CAROTHERS: The conclusion of law set forth under the name of Thomas Reid, above, applies equally in this instance.

(11) DEWANA CARR: The standard of care acceptable in the practice of dentistry in this State was so abused relative to the restoration placed in the lower left first molar of this patient as to constitute willful neglect and malpractice, so serious is the threat posed to one of this child's permanent teeth.

(12) ALLEN PAYNE: Relative to findings of fact (a), (b), (d) and (e) hereinabove set forth relative to this patient, we conclude that the same constitute willful neglect in the practice of dentistry. Finding of Fact (c) compels a conclusion of unprofessional conduct in the practice of dentistry.

(13) ERIC LEE: Charging for professional services not rendered was unprofessional conduct in the practice of dentistry.

We conclude that the foregoing particularized conclusions, taken both severally and collectively, support the general conclusion that the Respondent herein has been guilty of malpractice, willful neglect, and unprofessional conduct in the practice of dentistry.

We further conclude, as a mixed matter of law and fact, that the investigation preceding this hearing, all pre-hearing discovery proceedings, and this hearing were conducted lawfully, fairly, impartially, and without any bias toward the Respondent.

This Board is of the very definite opinion that the foregoing Findings of Fact and Conclusions of Law are more than sufficient to justify the suspension of the Respondent's license to practice dentistry. We are, however, more concerned with the strengthening of the

Respondent's professional competency and abilities and with the ultimate protection of the health and welfare of the public from which he draws his professional practice than with penalizing the Respondent.

IT IS, THEREFORE, ORDERED that the license of Dr. Reginald A. Hawkins to practice dentistry in the State of North Carolina is hereby suspended, effective twenty (20) days after service of this Opinion and Order upon him, and shall be and remain suspended unless he has or until he shall become enrolled in and attending a school of dentistry having accreditation requirements recognized by the American Dental Association Council on Dental Education and shall be engaged in a course of clinical operative restorative dentistry in which he will operate on a clinical floor under the supervision, direction and instruction of the regularly designated instructor in the operative restorative department of said school for a prescribed course of not less than 100 chronological clinical hours; or, as an alternative, Dr. Hawkins may enroll and attend such dental school in a concentrated continuing education program within the limits of said school and approved by the North Carolina State Board of Dental Examiners.

In the event the said Dr. Hawkins meets the requirements of enrollment and commencement of class attendance hereinabove directed prior to the expiration of twenty (20) days from the date of service of this Order, the initial suspension of license hereinabove ordered will be ineffective so long as he further complies with the terms, provisions and conditions hereinafter set forth.

In the event the initial suspension of license hereinabove ordered does become effective, the said Dr.

Hawkins' license shall immediately be reinstated upon receipt of due certification from the Administrator or Dean of the school of dentistry at which he is in attendance that the said Dr. Hawkins has actively commenced one of the courses of study hereinabove required, subject, however, to the following terms and conditions:

(a) He must continually engage in the pursuit of the above prescribed course of study, without voluntary interruption of the same during the regular hours of said course, until such time as the Administrator of the school of dentistry attended by him certifies to this Board that said Dr. Hawkins has satisfactorily concluded said course of study;

(b) During the period of time that he is engaged in the aforesaid course of study, said Dr. Hawkins may engage in the practice of dentistry in the State of North Carolina; provided, however, that he shall, during said time, at the request of the Board, make available to the Board his pre-operative and post-operative charts and his pre-operative and post-operative x-rays pertaining to any and all patients upon whom he performs any operative restorative procedure during said period of time; this condition shall exist and shall remain in force and effect for a period of twelve (12) months from the date said Dr. Hawkins commences the course of study above specified or until he completes said course of study, whichever shall be the longer period.

In the event the said Dr. Reginald A. Hawkins violates the terms and provisions of sub-paragraph (a) above, his

license shall be suspended immediately and shall remain suspended until such time as he resumes compliance with the terms and conditions of said sub-paragraph (a);

In the event the said Dr. Reginald A. Hawkins violates any of the terms and conditions of sub-paragraph (b) above, his license shall forthwith be suspended for thirty (30) days for each separate violation thereof.

In no event shall the initial suspension of license hereinabove ordered lapse into abeyance until such time as said Dr. Reginald A. Hawkins is duly enrolled in and actively engaged in the aforesaid course of study and such fact is duly certified to this Board by notice forwarded to the following address:

Dr. Clinton C. Diercks,
Secretary
N.C. State Board of Dental
Examiners
Morganton, North Carolina

The Respondent is hereby advised that he has the right, under Section 150-24 of the General Statutes of North Carolina, to appeal the decision of the Board for review in the Superior Court of Wake County, the Superior Court of Mecklenburg County or in any other superior court in this State which might be agreed upon between said Respondent and this Board. Please take notice that, in order to obtain said judicial review, you must, WITHIN TWENTY (20) DAYS after the service upon you of this Decision and Order, file a written notice of appeal with the secretary of this Board stating all

exceptions taken to the decision and indicating the court in which the appeal is to be heard. Said notice of appeal shall be filed with the secretary of this Board at the following address:

Dr. Clinton C. Diercks, Secretary
N.C. State Board of Dental Examiners
P.O. Box 490
Morganton, North Carolina

Failure to file said notice of appeal in the manner and within the time hereinabove stated shall operate as a waiver of your right to appeal and result in the decision of this Board becoming final.

This is the unanimous opinion of all of the members of the North Carolina State Board of Dental Examiners and the same is duly entered this 30 day of July, 1968.

GUY R. WILLIS D.D.S.

CLINTON C. DIERCKS, D.D.S.

S. L. BOBBITT, D.D.S.

WADE H. BREELAND, D.D.S.

R. B. BARDEN, D.D.S.

FREEMAN C. SLAUGHTER, D.D.S.

SERVICE OF OPINION AND ORDER OF JULY 30, 1968 ON DR. JOHN P. STINSON

STATE OF NORTH CAROLINA

To the Sheriff of Mecklenburg County, North Carolina, GREETING:

YOU ARE HEREBY COMMANDED TO SERVE THE ATTACHED OPINION AND ORDER OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS UPON THE FOLLOWING NAMED, AND THE MANNER OF YOUR SERVICE SHALL BE THE DELIVERY OF A COPY OF THE SAID OPINION AND ORDER TO:

Dr. John P. Stinson
1023-1/2 Beatties Ford Road
Charlotte, North Carolina

Issued at Morganton, Burke County, North Carolina, this 30th day of July, 1968, by the North Carolina State Board of Dental Examiners.

/s/ DR. CLINTON C. DIERCKS
Secretary-Treasurer
North Carolina State Board
of Dental Examiners

SHERIFF'S RETURN

Received: July 30, 1968.

Served: July 31, 1968, by delivering a copy of this

Opinion and Order, personally to Dr. John P. Stinson in Mecklenburg County, North Carolina.

DONALD W. STAHL
Sheriff of Mecklenburg County, N. C.
By: Luther A. Kearnes
Deputy Sheriff

DECISION OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS (STINSON)

Pursuant to the terms, provisions and conditions of Article 2 of Chapter 90 and of Chapter 150 of the General Statutes of North Carolina, the above entitled proceeding came on for hearing before all members of the North Carolina State Board of Dental Examiners (hereinafter referred to as "Board") in the City of Charlotte, County of Mecklenburg, State of North Carolina. The Board was comprised of the following members: Dr. R. B. Barden, Dr. S. L. Bobbitt, Dr. W. H. Breeland, Dr. Clinton C. Diercks, Dr. Freeman C. Slaughter and Dr. Guy R. Willis. The hearing was commenced on January 30, 1968, and was concluded on March 5, 1968.

It was stipulated and agreed by and between Dr. John P. Stinson (hereinafter referred to as "Respondent") and his counsel and the Board and its counsel that the requirements of G. S. Sec. 150-20 relating to the time within which the Board's decision must be rendered were specifically waived and that the decision should be rendered within 60 days after the receipt by the Board of the complete written transcript of these proceedings. The

final portion of the written transcript was delivered to the Board on June 20, 1968.

This proceeding was instituted by Notice duly served upon the Respondent on the 31st day of July, 1967, advising him that sufficient evidence had come to the attention of the Board to justify the suspension or revocation of his license to practice dentistry in the State of North Carolina if such evidence were not rebutted or explained, said Notice containing a statement of the general nature of the evidence and an admonition that the Respondent had twenty (20) days within which to request a hearing before the Board.

On August 12, 1967, the Respondent filed with the Board his Request for Hearing and Response to Notice wherein it was requested, among other things that: (1) Respondent be supplied with a more definite and certain statement of the evidence in the possession of the Board; (2) Respondent be supplied with the names and addresses of persons or entities "participating in the bringing and investigation of the charges contained in the Notice and of the names and addresses of all persons and of exhibits or documents upon whose testimony or upon which the Board intends or expects to rely in support of the charges contained in the Notice"; (3) An order issue permitting the Respondent to (a) adversely examine "all persons participating in the bringing or investigation of the charges contained in the Notice or who are expected by the Board to testify in support of the charges", and (b) "examines all exhibits or documents expects or intends to rely in support of the charges".

A formal Notice of Hearing was duly served upon the Respondent on September 1, 1967, which contained, among other things:

(1) A bill of particulars and a more definite statement of the evidence as requested by the Respondent;

(2) An allowance of the adverse examination of prospective witnesses and the examination of documents and prospective exhibits, as requested by the Respondent;

(3) The names and addresses of all persons who had participated in the investigation giving rise to the evidence submitted to the Board; and

(4) A notification that the hearing requested by the Respondent would commence in Charlotte, North Carolina, at 9:30 A.M. on September 19, 1967.

Upon motion of counsel for the Respondent the hearing was, by Order dated September 8, 1967, continued to November 28, 1967, in order to permit the Respondent to conduct the previously authorized prehearing discovery proceedings.

On September 12, 1967, the Respondent filed his Motion to Examine Documents and Response to Notice of Hearing. Subsequent thereto, all documents and prospective exhibits in the possession of the Board were made available for examination by the Respondent and his counsel in the office of the Board's counsel at Morganton, North Carolina.

On October 13, 1967, the Board commissioned Edna Ferster to take and report the examinations requested by the Respondent, and said examinations were duly conducted in Charlotte, North Carolina, on November 6, 7 and 11, 1967, during the progress of which the testimony

of the following individuals was taken: Dr. Luby T. Sherrill, Dr. A. Craig Phillips, Mr. James Burch, Dr. J. H. Guion, Dr. Paul Stroup, Jr., Dr. J. H. Rehm, Dr. C. E. Sturdevant, Dr. Fleming Stone, Dr. Worth Williams, Dr. Barry Miller, and Dr. H. E. Gaskins.

On November 24, 1967, the Board, upon joint motion of counsel for the Respondent and counsel for the Board, ordered the scheduled hearing continued to January 29, 1968, so that the written transcripts of the aforesaid pre-hearing examinations could be prepared and delivered to the Respondent and to the Board prior to commencement of the hearing.

The evidentiary material which formed the basis for this entire proceeding was obtained from the office of the Superintendent of the Charlotte-Mecklenburg Schools by subpoena duces tecum issued December 21, 1966, by the President of the Board and served on the same day by the Sheriff of Mecklenburg County. The subpoena duces tecum was prompted by reports that had reached this Board indicating the possibility of a breach or violation of the Dental Practices Act (Chapter 90, Article 2, N.C. Gen. Stat.) by the Respondent. By the above said process, the Board secured possession of various documents, x-rays and other pertinent materials pertaining to all dentists who, during the summer of 1966, had participated in the dental treatment of qualified children enrolled in the Charlotte-Mecklenburg School System, which treatment was financed by funds made available under the Federal Elementary and Secondary Education Act. It appeared from these documents and materials that, from an investigation and examination of many of the patients treated by the Respondent, the following discrepancies had been charged to said Respondent:

NAME OF PATIENT AND DISCREPANCY NOTED

1. Houston, William
   Caries present around fillings and fillings not complete

2. Shufford, Ervin
   Def. fillings on both lower 1st. molars
   Caries under restorations

3. McKenny, Scillisteen
   One defective filling
   Re-do work
   Defective L. left 2nd. molar

4. Reid, Linda
   Lower left 1st. dec. molar needs to be extracted
   Caries on distal of upper left 1st. dec. molar
   Caries on distal of lower left 2nd. dec. molar

5. Phifer, Diane
   Restorations should be replaced on upper right and left per. molars

6. Bell, Evelyn
   Caries under restorations

7. Williams, Stana
   To be re-examined
   Service incomplete

8. White, Henrietta
   Root tip
   Caries under restoration

9. Fulton, Ervin
   Unsatisfactory work

10. Howard, Avery
    Upper dec. molars not extracted but billed for.

11. Howard, Audrey
    10 restorations present 12 billed for
    7 poor restorations that should be replaced or teeth extracted

12. Burton, Gospie
    Caries MO E/L
    Only one surface E/V
    Caries lower right 1st. and 2nd. dec. molars and upper 1st. per. molars

13. Moore, Pricilla
    Root tip
    Decay under low left 1st. dec. molars

14. Brewer, William
    Caries under restorations

15. Brandon, Trymona
    Caries 6/ under restoration

16. Brandon, Tryonne
    More surfaces billed for than filled

17. Archie, Billie
    Amalgam bridge–fill teeth sep.
    Caries still present

18. Howard, Anita
    Upper right 1st and 2nd dec. molars prob. should be extracted
    Caries under fillings

19. Huntley, Karen
    Restorations on upper 1st. molar marked poor and should be replaced
    Re-do filling

The Board determined that further examinations and evaluations should be conducted and, accordingly, requested Dr. Herman E. Gaskins, Professor of Operative Dentistry at Howard University School of Dentistry; Dr. Fred C. Fielder, Professor of Operative Dentistry at Meharry Medical College; and Dr. Clifford M. Sturdevant, Chairman of the Department of Operative Dentistry and Professor of Operative Dentistry at the University of North Carolina School of Dentistry, to examine and evaluate all post-operative x-rays and chartings of the above named patients (as well as conduct clinical examinations when possible) in relation to the discrepancies above listed and report their collective findings to the Board. These gentlemen complied with the request of the Board and, thereafter, submitted a report containing the following pertinent findings:

DISCREPANCIES

The Charlotte Review Committee of six dentists interpreted discrepancy to mean one or more of the following (see page 2 of the Rough Draft Report of this Committee):

Discrepancy # Discrepancy

1. Billing for work not done.

2. Dental decay left under fillings.

3. Decayed surfaces left in a tooth which had been filled.

4. Bridging of amalgam filling across two adjacent teeth and/or other unacceptable dental treatment.

5. Stating that dental care was complete when evidence revealed that care was incomplete.

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREP-ANCIES
Dr. Stinson,	Moore, Priscilla	An O billed as DO (on/EL). Billed for extraction left E. The ONLY E on left that is gone (partially gone) is maxillary E. This tooth was fractured in extraction, and remaining portion of CROWN and roots were left in jaw by Dr. Stinson		#1,4
	Gaspie, Burton	Caries not removed at distogingival margin (D/L). Billed for DO on E/L when it was an O.		

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREP-ANCIES
Dr. Stinson		Stated "no further work necessary" when decayed lesions still present.		#1,2,5
	Howard Audrey	Billed for O on 6U, and no filling present in tooth. Caries remaining on gingival floors/ DEL. Also caries under fillings ED/U.		#1,2
	Fulton, Ervin	Billed for OL in E/U; then billed for extraction of ED/U, and these still present in mouth. Billed for MO in /EU, and mesial portion missing 1½ months later.		#1, 4
	Williams, Stana	Charlotte Review Comm. called this case a discrepancy due to dentist saying that "all treatment was completed" when in fact there was untreated caries. We could not verify except by clinical examination because x-rays missing.	We examined and verified that Comm. was correct inasmuch as upper left first molar was carious in central pit and mesial pit and was untreated.	#5
	Brandon, Tyrone	O fillings on 6's billed as MO's		#1

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREP-ANCIES
Dr. Stinson	Reid, Linda	Caries untreated on D of /DU at time Dr. Stinson did an O; also caries untreated on M of /EU at time an O was done.		#3
	Houston, William	x-rays too dark to verify.	Our clinical exam and new x-ray did verify that Comm. was correct that dentist should not have said "all treatment completed." We found that mesial of D/ and mesial of /D were carious	#5
	Brandon, Trymona	Billed an OL on 6U as an MOL. Billed an O on 6/L as a DO.		#1
	Avery, Howard	Billed for four extractions. According to x-rays of the Review Committee of this patient and the clinical charting of the Review Comm., these teeth are still present in mouth.		#1

This review panel, in many instances giving the Respondent the benefit of any doubt they entertained, eliminated from consideration those discrepancies that had been charged to the Respondent as a result of his treatment of Ervin Shufford, Scillisteen McKenny, Diane Phifer, Evelyn Bell, Henrietta White, William Brewer, Billie Archie, Anita Howard, and Karen Huntley.

The original Notice and Notice of Hearing (containing a bill of particulars) subsequently served on the Respondent were founded upon the report submitted by the three-man review panel consisting of Drs. Gaskins, Fielder and Sturdevant.

FINDINGS OF FACT

BASED UPON THE ENTIRE RECORD HEREIN, INCLUDING TESTIMONY OF ALL WITNESSES, STIPULATIONS, DOCUMENTS AND EXAMINATION AND SCRUTINY OF ALL EXHIBITS, THE BOARD FINDS THE FACTS TO BE AS HEREINAFTER SET FORTH:

On June 29, 1966, the Charlotte-Mecklenburg Board of Education caused letters to be sent to dentists practicing in the Charlotte-Mecklenburg area requesting that they indicate, by return mail, whether they wished to participate in the treatment of medically indigent children during the summer of 1966 under the auspices of the Elementary and Secondary Education Act (hereinafter referred to as "ESEA"). Some thirty-six dentists, including the Respondent, made a positive response.

By letter notification and reply forms, parents of children who qualified for dental treatment under the

program were given the opportunity to select the dentist with whom they wished to secure appointments for treatment of the children's teeth. Appointments were then made with the dentist, either by the parents or by school personnel who were administering the program.

Thereafter, a letter authorizing the dentist to treat a respective child was forwarded to said dentist. The Respondent saw or treated seventy-four ESEA patients and, relative to each patient, received the following authorization letter from the Mecklenburg County Department of Public Health, which Department was working with the Board of Education in planning and coordinating the program:

Dear Doctor Stinson,

This letter is your authorization to treat (name of patient). You may perform routine prophylaxis, topical fluoride, restorations, and extractions without further authorization. Any unusual treatment or procedure may be approved by the dental director.

All work must be completed and statement mailed before August 25, 1966.

Statements must be itemized and in duplicate.

Do not submit a statement for work to be done in the future. Bill only for completed work. Please indicate on your statement whether or not this child needs more care at this time.

Make statements to:
Project ESEA – Title I
Charlotte-Mecklenburg Board of Education
720 East Fourth Street
Charlotte, N.C. 28202

Mail to:
Dental Director – ESEA
1200 Blythe Boulevard
Charlotte, N.C. 28203

Call me for any clarification or confirmation.

Sincerely,

/s/ Luby T. Sherrill

Luby T. Sherrill, D.D.S., M.P.H.
Dental Director, ESEA

The Respondent, as well as all other participating dentists, was asked to indicate on his statement "whether or not this child needs more care at this time". The children who qualified for treatment in the program were from low-income families; most of them had never had any prior professional dental care. For this reason the request that the Respondent make the above mentioned indication on his statement was significant and important so that the administrators of the program could make an effort to follow up with further treatment of those children who needed it in the event additional or related program funds were available or became available for that purpose. The requested indication clearly meant a state-

ment as to whether the condition of the teeth of the child was such as to evidence a present need for additional dental treatment.

The Respondent treated his first ESEA patient in early August, 1966; treatment of all ESEA patients was to be completed and statements mailed by August 25, 1966. In the span of some three to three and one-half weeks, the Respondent saw or rendered treatment to seventy-four ESEA patients for which he submitted statements in the total amount of $5,886.00.

Shortly after Dr. Luby T. Sherrill, Dental Director of the ESEA program, began receiving statements from the participating dentists, for approval for payment by the office of Mr. James Burch, Director of ESEA activities employed by the Charlotte-Mecklenburg Board of Education, he became concerned because of the amount involved in some of the statements and the large number of children being treated by a relatively few dentists. Consequently, he and two of his associates, Mr. Robert Hunter and Dr. Gunther, on August 12, 1966, visited one of the schools in which children were enrolled who had been treated under the program and made clinical examinations of the teeth of twenty-two of those children. Dr. Sherrill discovered various defects in the dental work performed on those children and discrepancies between the treatment apparently rendered and the treatment for which charges had been made. On August 12, 15, 17, and 20, 1966, Dr. Sherrill and Dr. Gunter made examinations of a total of 111 of the children who had been scheduled for treatment; of these, 84 had actually kept their appointments and bills or statements had been rendered by the dentists who had seen the respective children. Of the 84 children who had been seen

by a dentist and for whom a statement was sent to the ESEA Dental Director, 21 were determined to involve discrepancies which Dr. Sherrill noted, consisting of billing for work apparently not done, leaving decay in margins around fillings, and other inappropriate or unacceptable treatment.

Dr. Sherrill conveyed his findings to Mr. James Burch; Mr. Burch, in turn, transmitted the report to Dr. Craig Phillips, Superintendent of the Charlotte-Mecklenburg Schools.

Following the report of Dr. Sherrill, the Charlotte-Mecklenburg Board of Education, through Dr. Phillips and Mr. Burch, asked Dr. Homer Guion, of Charlotte, North Carolina, who was then President of the North Carolina Dental Society, to name a committee of local dentists to investigate all work performed by all dentists with private practices who had participated in the ESEA program during July and August, 1966. Pursuant to this request, Dr. Guion appointed the following named committee of six dentists to conduct the investigation and report to Dr. Phillips: Drs. Paul A. Stroup, Jr., J. G. Rehm, Fleming M. Stone, J. D. Martin, Barry G. Miller, and Worth A. Williams, all of Charlotte, North Carolina.

After the six-man committee was selected and had agreed to serve in the capacity requested, the following procedure was devised and followed for their investigative examinations, meetings, determination of discrepancies, and report of findings:

(1) Copies were made of all statements that had been submitted by all dentists who had participated in the program. (36 had indicated a willingness to participate;

only 28 actually treated patients and submitted statements). The copies were prepared in such a manner that the letterhead or names and addresses of the dentist and his signature were omitted, leaving only the name of the patient, the itemization of treatment rendered and the charge therefor, and the statement thereon in response to the request for information as to whether or not the child needed further dental care or treatment. This was done by and under the supervision of Mr. James Burch.

(2) The six-man committee convened at Central Piedmont College on or about October 6, 1966, for the purpose of clinically examining all of the subject children whom Mr. Burch could locate in the school system and have transported to the college.

(3) The committee used the dental facilities at the college for the purpose of conducting their examinations. The children were identified by numbered tags pinned to their clothing, and the charts upon which the examining dentists recorded their findings were numbered so as to correspond with the identification number of the child examined. The name of the child was also placed on his respective chart. On the same day, October 6, 1966, college personnel made x-rays of the teeth of the children who were examined; they were also marked with the names and identification numbers of the respective children.

(4) The charts prepared by the committee of examining dentists and the x-rays made at the college were delivered to Mr. Burch. He and his staff then correlated the charts, x-rays and copies of statements (with identification of the treating dentist deleted or omitted), and, relative to each child who had been examined by the

six-man committee of dentists, placed those three items in a brown manila envelope.

Mr. Burch prepared a list of all private dentists who had previously indicated they would participate in the program and assigned a number to each one. This numerical identification list was kept in his private files. The identification number of the dentist who had treated a child was placed in one corner of the outside of the envelope containing the chart, x-rays and statement pertaining to that child.

(5) All of the envelopes or packets thus assembled were delivered to the assembled six-man committee for their joint examination and review. The committee met a number of times and all members were present at each meeting. Mr. Burch was also present at each meeting, and at the conclusion of each meeting he took possession of all of the envelopes or packets and retained them in his possession until the next committee meeting. At no time were the names of the treating dentists revealed or made known to the committee; identification of the dentist was solely by number.

When the committee agreed upon a discrepancy or discrepancies as to a particular child, it was noted on the outside of the envelope and that envelope was placed in a separate stack or pile. The committee decided upon and utilized the following denominations of discrepancies:

1. Billing for work not done.

2. Dental decay left under fillings.

3. Decayed surfaces left in a tooth which had been filled.

4. Bridging of amalgam filling across two adjacent teeth and/or other unacceptable dental treatment.

5. Stating that dental care was complete when evidence revealed that the care was incomplete.

(6) Through Dr. Guion, the report of the six-man review committee was communicated to Dr. Craig Phillips by letter dated October 27, 1966, the report showing, among other things:

(Board Exhibit No. 5)

(a) Of the 601 patients treated by private dentists, the committee had examined 308;

(b) The general procedure followed by the review committee;

(c) That discrepancies were found in the work of four (4) of the thirty-six (36) dentists, accounting for discrepancies noted as to 92 of the 308 children examined who were treated by private dentists;

(d) A list of the committee's interpretation of discrepancy;

(e) A notation that the treating dentists were identified only by an assigned number.

From the information noted on and contained in the envelopes, Mr. Burch compiled and assimilated the discrepancies chargeable to the Respondent who was identified as dentist Number 29. (See: Board Exhibit No. 6). This information was documented in the manner and form which has heretofore been set forth in the preamble

of this decision. (Board Exhibit No. 31). The committee examined 49 of the 74 patients treated by the Respondent; discrepancies were noted as to 19 of them.

As a result of meetings and conferences involving the Respondent, his counsel, Dr. Craig Phillips, and administrative personnel concerned with the administration of the ESEA program, the Respondent accepted $3,597.00 as payment for his services.

On December 21, 1966, the Board by subpoena obtained possession of the records, reports, x-rays and related documents pertaining to all of the dentists who had participated in the program. Until that time, the Board had, in no way, been involved in the situation either directly or indirectly.

Thereafter, Drs. Clifford M. Sturdevant, Herman E. Gaskins, and Fred C. Fielder were requested, by the Board, to review the report of the six-man committee, the post-operative x-rays made at the College, and all other documents or other matters relative to the four dentists who were indicated as having discrepancies in their work or billing as well as the other material then in the possession of the Board. In response to this request, these three men met in Charlotte, North Carolina, in early February, 1967, reviewed the committee report, examined all records pertaining to the four dentists charged with discrepancies, clinically examined 13 of the children in question, and checked random samples of the records of dentists who had not been charged with discrepancies.

Their initial report to the Board was submitted under date of February 21, 1967. (Board Exhibit No. 7) As to

the Respondent, they verified ten of the nineteen patient discrepancies previously reported by the committee of six. By letter dated March 6, 1967, (Board Exhibit No. 7-A) the three-man panel submitted a particularized report of their findings as to specific patients of the Respondent. (Board Exhibit No. 7-B). This documentation has heretofore been fully set forth in the preamble of this decision and is hereby fully incorporated by reference into the body of these findings of fact.

The nomenclature utilized by the Respondent for the written identification of teeth within the mouth in accordance with their relative positions was determined to be as follows: primary dentition (deciduous teeth) were identified by capital letters, beginning with "A" at the midline and continuing serially in a posterior direction in each quadrant of the mouth; secondary dentition (permanent teeth) were identified numerically, beginning with "1" and continuing serially in a posterior direction in each quadrant of the mouth; the midline was indicated by a slash mark; a tooth in the right side of the patient's mouth was denoted (either by alphabetical letter or by numeral) on the left side of the slash mark so as to graphically represent looking into the patients mouth from the outside; a further denotation of "L" was used to indicate a lower or mandibular tooth, "U" to indicate an upper or maxillary tooth. For example, "E/U" referred to the right, upper E (deciduous second molar); "/6L" referred to the left, lower 6 (permanent first molar).

The various surfaces of the teeth are identified as follows:

(1) "O" represents the occlusal or biting surface;

(2) "M" represents the mesial surface, the side of the tooth toward the front center or midline of the mouth;

(3) "D" represents the distal surface, the side of the tooth toward the back of the mouth;

(4) "L" represents the lingual surface, the side of the tooth toward the tongue;

(5) "F" represents the facial surface, the side of the tooth toward the cheek or lips; this is also occasionally referred to as the buccal surface.

Hereinafter, the nomenclature for identification of teeth and the surfaces of teeth set forth above will be used rather than the descriptive words.

Relative to various of the patients of the Respondent and the matters set forth in the initial Notice and the subsequent Notice of Hearing served upon the Respondent, we find the facts to be as follows:

(1) PRISCILLA MOORE: (a) There is some doubt as to an overcharge arising from the billing of an O restoration on the /EL as a DO restoration. This alleged discrepancy is eliminated from consideration. (b) In extracting the /EU Respondent fractured the tooth and left the entire root and a part of the crown of the tooth in the jaw. The Responsent neither noted the retention of the root and crown on his chart nor made an appointment with the patient for further treatment. All treatment of this child was done on August 19, 1966, and a statement was rendered the same day containing the notation, "No further treatment needed".

The root and a portion of the crown of the subject tooth were revealed to still be embedded in the jaw by x-rays made October 6, 1966. This is unacceptable dentistry that could lead to a variety of unfavorable circumstances, such as infection, loss of bony tissue surrounding the roots, or deflection of a subsequently erupting permanent tooth. Acceptable practice, under any standards, requires the removal of the fractured portions of the tooth here left in the mouth—either by the treating dentist or by an oral surgeon. Treatment of Priscilla Moore was, by no means, completed.

(2) GASPIE BURTON: (a) A DO restoration was placed in D/L by the Respondent and he left caries in the tooth at the gingival margin of the restoration. There is some possibility that the defect appearing at the gingival margin of the restoration might have resulted from the inappropriate use of calcium hydroxide as a restoration base in such a manner as to permit it to communicate with the oral cavity as a result of which such a base would be washed out by fluids, leaving an opening into the tooth structure permitting the recurrence of decay. The Respondent's statement pertaining to treatment of this child was submitted August 19, 1966. We are of the opinion, and so find, that the radiolucency appearing on the x-ray made October 6, 1966, reveals that decay was left at the distogingival margin of a distal-occlusal restoration placed by the Respondent in the right lower "D" or that the restoration was so poorly done as to allow and encourage the rapid recurrence of decay beneath the restoration. Either practice is sub-standard dentistry.

(b) It appears that the DO restoration for which the Respondent charged on the E/L was very likely an MO;

therefore, it would have been a two-surface restoration and the Respondent did not, in fact, charge for work which he had not done.

The statement noted, "No further work necessary".

(3) AUDREY HOWARD: (a) There is uncertainty as to whether the x-ray radiolucency appearing under the restorations placed by the Respondent in /DL and /EL is indicative of caries (decay) or an application of calcium hydroxide. This matter is eliminated.

(b) Caries was wrongfully left under restorations placed in E/U and D/U.

(c) It is unclear as to whether an O restoration was placed in /6L, if so, it was missing at the time the post-operative x-ray was made on October 6, 1966.

The Respondent's statement was submitted August 23, 1966, and noted, "No further treatment necessary".

(4) ERVIN FULTON: (a) One discrepancy here charged is that the Respondent billed for an OL restoration in E/U and also billed for the extraction of both E/U and D/U, with both teeth being present in the mouth when post-operative x-rays were made October 6, 1966, the Respondent having submitted his statement relative to this patient on August 16, 1966, with the notation, "No further work necessary". Neither of these teeth were, in fact, extracted.

The x-ray evidence does indicate, however, that D/L, /DU, /6L and /DL are missing; the Respondent's statement includes charges for the extraction of /6L and D/L;

his testimony was that he also extracted /DU and /DL and that the same was erroneously billed as an extraction of E/U and D/U. If this is true there was no charge for work not done; there would have been four extractions performed and a total of four charges for the same. We accept this explanation and find the same to be the fact.

(b) Respondent placed an MO restoration in /EU and the M (mesial) portion of the same was missing when post-operative x-rays were made October 6, 1966. We find that the cavity preparation was too shallow and that this was a substantial factor contributing to the loss of a large portion of that restoration.

(5) STANA WILLIAMS: Under date of August 23, 1966, the Respondent submitted his statement for treatment of this patient with the following notation made on it: "No further treatment necessary." Both the report of the six-man review committee and that of the three-man review panel stated that caries was left untreated in the central pit and the mesial pit of the upper left first molar (/6U). It appears, and we find as a fact, that the caries in question would have been of sufficient depth at the time this child was treated in August to have required operative restoration.

The presence and extent of the caries was clinically verified by the three-man review panel in February, 1967. No other caries was noted to which the six-man committee report could have previously referred.

(6) TYRONE BRANDON: The Respondent submitted a statement charging for three-surface restorations (MOL) on 6/L and 6/U; the statement likewise contained charges for a two-surface restoration (DO) on /6U and a two surface restoration (MO) on /6L.

The evidence revealed that there was no M (mesial) restoration placed in 6/L, 6/U, or /6L. It appeared that a DO restoration may, in fact, have been placed in /6U. The x-ray did not clearly reveal the distal (D) surface of any of these teeth.

The Respondent testified that the billings indicated on his statement were clerical errors and that, in fact, the restorations, as indicated by his office chart were as follows:

6/U-DOL
6/L-DOL
/6L-DO
/6U-DO

As indicated above, it does appear that a DO may have been placed in /6U. The Respondent's pre-operative x-rays indicate such extensive decay in the distal (D) areas of all of these teeth (6's) that we are inclined to agree with the Respondent's explanation of these matters and to assume that he surely restored the distal surfaces of said teeth. We, accordingly, find no discrepancies as to this patient, but view the same as a clerical error in billing.

(We do note, as to this patient, that the Respondent specifically charged for Dycal bases—this being a calcium hydroxide compound—and for pulp capping).

(7) LINDA REID: The Respondent placed an O (occlusal) restoration in /DU and left caries untreated on the distal surface of the same tooth; he placed an O restoration in the adjacent /EU and left caries untreated on the mesial surface of the same tooth. The mesial of

/EU and the distal of /DU are proximal surfaces and the caries on those surfaces would have been of such a depth at the time the patient was treated that the only appropriate treatment would have been restoration. The O restorations in these teeth are quite close to the proximal decay and the restorations could easily have been extended to include the same. Standard practice in operative dentistry requires restoration of the proximal surfaces, when decayed, as a part of or prior to the restoration of the occlusal surface in order to achieve adequate retention form.

The Respondent's pre-operative x-rays revealed the proximal decay and his clinical examination should also have alerted him of its presence.

This patient was treated August 19, 1966, and the Respondent's statement of the same date carried the notation, "No further treatment necessary". In fact, further treatment of this child was necessary.

(8) WILLIAM HOUSTON: The Respondent submitted his statement relative to treatment of this patient on August 22, 1966, and indicated thereon, "No further treatment necessary". Decay was left on the mesial surface of D/U and /DU, with an occlusal restoration having been placed in each tooth by the Respondent. It appears that these carious areas were such that they might properly have been treated with stannous fluoride at the time the Respondent saw this patient and his testimony was that he did so. We find no discrepancy.

(9) TRYMONA BRANDON: It was indicated that, as to this patient, the Respondent charged for a three-surface restoration (MOL) on 6/U and performed only a

two-surface restoration (OL); that he charged for a two-surface restoration (DO) on 6/L and performed only a one-surface restoration (O).

It appears possible from the clinical evaluation of the patient that 6/U may have had a three-surface restoration (DOL rather than MOL) and that 6/L may have had a DO restoration. We so find.

(10) HOWARD AVERY: The Respondent charged for four extractions which he did not perform (D/U, E/U, /DU and /EU). His statement contained the notation, "No further treatment necessary". Significantly, the Respondent's pre-operative x-rays of this child reveal /DU to have been a sound, healthy tooth.

We are convinced that the six-man review committee and the three-man review panel were extremely lenient and liberal in their respective evaluations of the matters concerning this Respondent and that doubtful situations were usually resolved in his favor. We are equally convinced by the evidence which we have seen and heard that, with respect to the patients in question, the Respondent has performed some dentistry of a standard far below that acceptable in this State, largely, perhaps, because of a great haste and an effort to do too much in too short a time. The Respondent, himself, stated that he took less time with these patients than he ordinarily or customarily utilized with his patients. He further indicated that, during the period when he was treating these patients, "it was pretty hectic", and that he temporarily employed an additional girl in his office for the sole purpose of assisting with clerical duties during that time.

CONCLUSION OF LAW

The North Carolina State Board of Dental Examiners, based upon the foregoing Findings of Fact, does hereby conclude, as a matter of law, that the Respondent has been guilty of willful neglect, unprofessional conduct, and malpractice in the practice of dentistry in this State, all in violation of Section 90-41 of the General Statutes of North Carolina, and in the following particular respects relative to the various patients here involved and the findings of fact set forth in connection with them:

(1) PRISCILLA MOORE: Leaving the root and part of the crown of a fractured tooth and representing that no further treatment was needed constituted willful neglect, malpractice and unprofessional conduct.

(2) GASPIE BURTON: Failure to remove gingival decay at the surface margin of a restoration or placement of the restoration in the manner indicated by the findings of fact constituted willful neglect.

(3) AUDREY HOWARD: Leaving caries or decay under restorations constituted willful neglect and tends toward malpractice.

(4) ERVIN FULTON: Sub-standard cavity preparation resulting in loss of restoration shortly after placement of the same was willful neglect.

(5) STANA WILLIAMS: Leaving the indicated caries untreated by operative procedure and representing that no further treatment was needed was willful neglect and highly unprofessional conduct.

(6) LINDA REID: The findings of fact relative to this patient require a conclusion that the same constituted willful neglect, malpractice and unprofessional conduct.

(7) HOWARD AVERY: Charging or billing for work not done or performed is unprofessional conduct.

We further conclude, as a mixed question of law and fact, that the investigation preceding this hearing, all pre-hearing discovery proceedings, and this hearing were conducted lawfully, fairly, impartially and without any bias toward the Respondent.

ORDER

The following statement is contained in Section 90-22(a) of the General Statutes of North Carolina:

> The practice of dentistry in the State of North Carolina is hereby declared to affect the public health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of North Carolina.

The North Carolina State Board of Dental Examiners was created as an agency of this State for the purpose of regulating the practice of dentistry within the State and this Board is ever mindful of its grave responsibilities so lucidly indicated in the above quotation.

In the interest of the public of this State and of the dental profession, it is therefore ordered as follows:

The license of Dr. John P. Stinson to practice dentistry in the State of North Carolina shall be suspended for thirty (30) days for each separate violation of the following terms and conditions hereby imposed:

(a) For a period of six (6) months from the date of service hereof, he shall, on alternate Fridays, beginning on the second Friday following the date of service of this Opinion and Order, forward to the Secretary of the North Carolina State Board of Dental Examiners pre-operative and post-operative charts and pre-operative and post-operative x-rays pertaining to all patients upon whom he has performed any restorative or surgical procedure whatsoever during the immediately preceding two-week period, which charts and x-rays will be duly returned to him.

Said charts and x-rays shall be forwarded by mail or otherwise delivered to the following address:

Dr. Clinton C. Diercks, Secretary
N.C. State Board of Dental Examiners
Morganton, North Carolina

(b) During a six-month period from the date of service hereof, the said Dr. Stinson shall permit any member of the Board or representative of the Board to reasonably examine or view his operative procedures in his office.

In the event of suspension or suspensions of said license as aforesaid, the running of the six-month probationary period shall, during the period or periods of suspension, be in abeyance, and the time thereof that was unexpired as of the date of the suspension of license shall resume running as of the date of reinstatement of said

license; and all of the terms, conditions and provisions of the above stated sub-paragraphs (a) and (b) shall continue to be in full force and effect until absolute expiration of the probationary period herein set forth and defined.

The Respondent is hereby advised that he has the right, under Section 150-24 of the General Statutes of North Carolina to appeal the decision of this Board for review in the Superior Court of Wake County, the Superior Court of Mecklenburg County or in any other superior court in this State which might be agreed upon between said Respondent and this Board. Please take notice that, in order to obtain said judicial review, you must, WITHIN TWENTY (20) DAYS after the service upon you of this Decision and Order, file a written notice of appeal with the secretary of this Board stating all exceptions taken to the decision and indicating the court in which the appeal is to be heard. Said notice of appeal shall be filed with the Secretary of this Board at the following address:

Dr. Clinton C. Diercks, Secretary
N.C. State Board of Dental Examiners
P.O. Box 490
Morganton, North Carolina

Failure to file said notice of appeal in the manner and within the time hereinabove stated shall operate as a waiver of your right to appeal and result in the decision of this Board becoming final.

This is the unanimous opinion of all of the members of the North Carolina State Board of Dental Examiners and

the same is duly entered this 30th day of July, 1968.

GUY R. WILLIS, D.D.S.
CLINTON C. DIERCKS, D.D.S.
S. L. BOBBITT, D.D.S.
WADE H. BREELAND, D.D.S.
R. B. BARDEN, D.D.S.
FREEMAN C. SLAUGHTER, D.D.S.

SERVICE OF OPINION AND ORDER OF JULY 30, 1968 ON DR. GEORGE T. NASH

STATE OF NORTH CAROLINA

To the Sheriff of Mecklenburg County, North Carolina, GREETING:

YOU ARE HEREBY COMMANDED TO SERVE THE ATTACHED OPINION AND ORDER OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS UPON THE FOLLOWING NAMED, AND THE MANNER OF YOUR SERVICE SHALL BE THE DELIVERY OF A COPY OF THE SAID OPINION AND ORDER TO:

Dr. George T. Nash
2506 Beatties Ford Road
Charlotte, North Carolina

Issued at Morganton, Burke County, North Carolina,

this 30 day of July, 1968, by the North Carolina State Board of Dental Examiners.

DR. CLINTON C. DIERCKS
Secretary-Treasurer
North Carolina State Board of
Dental Examiners

SHERIFF'S RETURN

Received: July 30, 1968.

Served: July 31, 1968, by delivering a copy of this Opinion and Order, personally to Dr. George T. Nash in Mecklenburg County, North Carolina.

DONALD W. STAHL
Sheriff of Mecklenburg County,
N.C.

By: LUTHER A. KEARNS
Deputy Sheriff

DECISION OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS (NASH)

Pursuant to the terms, provisions and conditions of Article 2 of Chapter 90 and of Chapter 150 of the General Statutes of North Carolina, the above entitled proceeding came on for hearing before all members of the North Carolina State Board of Dental Examiners (hereinafter referred to as "Board") in the City of Charlotte, County of Mecklenburg, State of North Carolina. The Board was comprised of the following members: Dr. R. B. Barden, Dr. S. L. Bobbitt, Dr. W. H. Breeland, Dr.

Clinton C. Diercks, Dr. Freeman C. Slaughter and Dr. Guy R. Willis. The hearing was commenced on January 29, 1968, and was concluded on March 5, 1968.

It was stipulated and agreed by and between Dr. George T. Nash (hereinafter referred to as "Respondent") and his counsel and the Board and its counsel that the requirements of G.S. Sec. 150-20 relating to the time within which the Board's decision must be rendered were specifically waived and that the decision should be rendered within sixty (60) days after the receipt by the Board of the complete written transcript of these proceedings. The final portion of the written transcript was delivered to the Board on June 20, 1968.

This proceeding was instituted by Notice duly served upon the Respondent on the 31st day of July, 1967, advising him that sufficient evidence had come to the attention of the Board to justify the suspension of revocation of his license to practice dentistry in the State of North Carolina if such evidence were not rebutted or explained, said Notice containing a statement of the general nature of the evidence and an admonition that the Respondent had twenty (20) days within which to request a hearing before the Board.

On August 12, 1967, the Respondent filed with the Board his Request for Hearing and Response to Notice wherein it was requested, amonth other things that:

(1) Respondent be supplied with a more definite and certain statement of the evidence in the possession of the Board; (2) Respondent be supplied with the names and addresses of persons or entities "participating in the bringing and investigation of the charges contained in the

Notice and of the names and addresses of all persons and of exhibits or documents upon whose testimony or upon which the Board intends or expects to rely in support of the charges contained in the Notice". (3) An order issue permitting the Respondent to (a) adversely examine "all persons participating in the bringing or investigation of the charges contained in the Notice or who are expected by the Board to testify in support of the charges", and (b) "examine all exhibits or documents expects or intends to rely in support of the charges".

A formal Notice of Hearing was duly served upon the Respondent on September 1, 1967, which contained, among other things:

(1) A bill of particulars and a more definite statement of the evidence, as requested by the Respondent;

(2) An allowance of the adverse examinations of prospective witnesses and the examination of documents and prospective exhibits, as requested by the Respondent;

(3) The names and addresses of all persons who had participated in the investigation giving rise to the evidence submitted to the Board; and

(4) A notification that the hearing requested by the Respondent would commence in Charlotte, North Carolina, at 9:30 a.m., on September 18, 1967.

Upon motion of counsel for the Respondent the hearing was, by Order dated September 8, 1967, continued to November 28, 1967, in order to permit the Respondent to conduct the previously authorized prehearing discovery proceedings.

On September 12, 1967, the Respondent filed his Motion to Examine Documents and Response to Notice of Hearing. Subsequent thereto, all documents and prospective exhibits in the possession of the Board were made available for examination by the Respondent and his counsel in the office of the Board's counsel at Morganton, North Carolina.

On October 13, 1967, the Board commissioned Edna Ferster to take and report the examinations requested by the Respondent, and said examinations were duly conducted in Charlotte, North Carolina, on November 6, 7 and 11, 1967, during the progress of which the testimony of the following individuals was taken: Dr. Luby T. Sherrill, Dr. A. Craig Phillips, Mr. James Burch, Dr. J. H. Guion, Dr. Paul Stroup, Jr., Dr. J. H. Rehm, Dr. C. E. Sturdevant, Dr. Fleming Stone, Dr. Worth Williams, Dr. Barry Miller and Dr. H. E. Gaskins.

On November 24, 1967, the Board, upon joint motion of counsel for the Respondent and counsel for the Board, ordered the scheduled hearing continued to January 29, 1968, so that the written transcripts of the aforesaid prehearing examinations could be prepared and delivered to the Respondent and to the Board prior to commencement of the hearing.

The evidentiary material which formed the basis for this entire proceeding was obtained from the office of the Superintendent of the Charlotte-Mecklenburg Schools by subpoena duces tecum issued December 21, 1966, by the President of the Board and served on the same day by the Sheriff of Mecklenburg County. The subpoena duces tecum was prompted by reports that had reached this Board indicating the possibility of a breach or violation of the Dental Practices Act (Chapter 90-Article 2, N.C.

Gen. Stat.) by the Respondent. By the above said process, the Board secured possession of various documents, x-rays and other pertinent materials pertaining to all dentists who, during the summer of 1966, had participated in the dental treatment of qualified children enrolled in the Charlotte-Mecklenburg School System, which treatment was financed by funds made available under the Federal Elementary and Secondary Education Act. It appeared from these documents and materials that, from an investigation and examination of many of the patients treated by the Respondent, the following discrepancies had been charged to said Respondent:

NAME OF PATIENT AND DISCREPANCY NOTED

1. Colvin, Cynthia
   Caries present under restorations

2. Cherry, Arthur
   Service not complete
   Caries-other teeth to be filled

3. Clindon, Rufus
   Services not completed

4. Wilkes, Margaret
   Caries not treated
   All service questionable
   X-rays not utilized in service

5. Brawley, Linda
   Four one surface restorations found on film and patient.
   Four two surface restorations billed for but not done.

6. Donaldson, Charlton
   Billed for one surface-not obvious
   Caries $\frac{6/6}{/6}$

7. McNeeley, Carol
   Amalgam bridge
   Bill and chart do not correspond

8. Limous, Johnny
   Service not complete

9. McInnis, Ray
   Charting and billing do not check

10. Caldwell, McDonald
    Two fillings not done or are missing according to chart

11. Thompson, Judy
    Amalgam in sockets
    Caries under restorations

12. White, Edward
    Charting and billing do not agree
    Caries still present

13. Smith, Sarah
    Decay under filling–left lower 1st, molar
    Caries remaining

14. Houston, Eva Mae
    Root to be removed #13
    Decay under lower right 1st, bicuspid
    Upper left molars restorations should be replaced as shown on Chart #28
    Restorations in #2, 3 are not present yet billed for

15. Townsend, Marvin
    Caries under restorations

16. Howie, Jerome
    Three restorations to be checked
    Caries under restorations

17. Caldwell, Arnita
    Caries in evidence under restorations
    Caries not removed

18. Fletcher, Doris
    Need to extract L. left per. molar #30

19. Berry, Darrell
    Caries under restorations

20. McClain, Clifton
    X-rays taken, why were dec. teeth filled
    Decay under upper left 1st. molar
    Caries under restorations
    Work not complete

21. McClurkin, Mary C.
    L–missing marked for 2 surface filling
    K–two surface caries
    S–caries remaining
    Error in billing

22. Barrino, David
    Re-check
    Re-submit bill with x-rays
    Cavities un-extended

23. Morrison, Phyllis Ann
    Re-submit evidence of work done

Statement rendered for services not completed
7, 8, 9, 14-2 indicated on statement but not on x-ray

24. Gillian, Doris
Lower D/ billed as 3 surface not filled

25. Thompson, Tony
Caries under restorations
Caries not treated

26. Watts, Treva
Decay under restorations "K, S, L"
Too many services charged for as compared to x-rays and charting

27. Morrison, James
Ext. upper left dec. molar
Caries untreated and under restorations

28. McKnight, Brenda
Defective filling
Root tip
All service inadequate

29. Bailey, Michael
Two teeth billed for only one filled
Caries remaining

30. Jamison, Ronald
Five restorations that should be replaced or teeth extracted
Correct-redo all

31. Osborne, Christine
Caries under all restorations

32. Patton, Adrian
Restorations inadequate
Amalgam bridges

33. Bynum, L'Tanya
Caries remaining around and under filling
Two (2 surface fillings billed as 3 surface)
Five teeth marked as filled—no filling

The Board determined that further examinations and evaluations should be conducted and, accordingly, requested Dr. Herman E. Gaskins, Professor of Operative Dentistry at Howard University School of Dentistry; Dr. Fred C. Fielder, Professor of Operative Dentistry at Meharry Medical College; and Dr. Clifford M. Sturdevant, Chairman of the Department of Operative Dentistry and Professor of Operative Dentistry at the University of North Carolina School of Dentistry, to examine and evaluate all post-operative x-rays and chartings of the above named patients (as well as conduct clinical examinations when possible) in relation to the discrepancies above listed and report their collective findings to the Board. These gentlemen complied with the request of the Board and, thereafter, submitted a report containing the following pertinent findings:

DISCREPANCIES

The Charlotte Review Committee of six dentists interpreted discrepancy to mean one or more of the following (See page 2 of the Rough Draft Report of this Committee):

Discrepancy #Discrepancy

1. Billing for work not done.

2. Dental decay left under fillings.

3. Decayed surfaces left in a tooth which had been filled.

4. Bridging of amalgam filling across two adjacent teeth and/or other unaccepted dental treatment.

5. Stating that dental care was complete when evidence revealed that care was incomplete.

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREP-ANCIES
Dr. Nash	Houston, Eva	Billed for surfaces not treated.		#1
	White, Edward	Filling billed for in lower right second pre-molar, but this filling was not done.	Verified that no filling was done in the lower right second pre-molar. Our examination showed massive decay in lower right second molar. In our opinion this was present in tooth last August.	#1, 5
	Caldwell, Mack	Billed for restorations which were not done.	We verified clinically	#1
	McInnes, Ray	Retained roots of A, J. Billed for extraction of L, and it is present in mouth.	We verified clinically	#1, 4

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREPANCIES
Dr. Nash	Clindon, Rufus	Stated "treatment completed" when treatment was still indicated.		#5
	Brawler, Linda	Billed for untreated teeth		#1
	Limous, Johnny		Our clinical exam and our x-rays verified Committee's opinion that care was incomplete, when dentist said "treatment completed."	#5
	Howie, Jerome	Billed for work not done.		#1
	Caldwell, Arnita	Did not remove caries under occlusal enamel mesial of DOF.		#2
	Fletcher, Doris	A "fine" example of caries remaining under a restoration.		#2
	McClain, Clifton	Decayed surfaces left in a tooth which had been filled.		#3
	Barrino, Theron	Billing for unerupted tooth. Billing for untreated tooth. Filling unextended to include caries.		#1, 2

DENTIST	PATIENT	EXAMINATION OF RECORDS	CLINICAL EXAM	DISCREP-ANCIES
Dr. Nash	Thompson, Tony	Billed for untreated tooth.		#1
	Watts, Treva	Untreated caries on distal of mandibular 1st dec. molar.		#5
	Morrison, James	Treatment incomplete when dentist said "treatment completed."		#5
	McKnight, Brenda	Left a root tip following an extraction.		#4
	Bailey, Michael	Billed for tooth not restored.		#1
	Patton, Adrin	Within 1½ months after placement of restorations in a tooth, ($9.00) the tooth is exfoliated. Amalgam bridges.	Verified in mouth the amalgam bridges on mandibular left and right. Right bridge is mobile "en masse."	#4
	Bynum, L'Tanya	Untreated caries on mesial of max. left 2nd dec. molar. Lost several fillings inside of 1½ months.		#4, 5
	Cherry, Arthur	Untreated caries on mesial of max. rt. 1st molar.		#5

This review panel, in many instances giving the Respondent the benefit of any doubt they entertained, eliminated from consideration those discrepancies that had been charged to the Respondent as a result of his treatment of Cynthia Colvin, Margaret Wilkes, Charlton Donaldson, Carol McNeely, Judy Thompson, Sarah Smith, Marvin Townsend, Darrell Berry, Mary C. McClurkin, Phyllis Ann Morrison, Doris Gillian, Ronald Jamison, Christine Osborne.

The original Notice and the Notice of Hearing (containing a bill of particulars) subsequently served on the Respondent were founded upon the report submitted by the three-man review panel consisting of Drs. Gaskins, Fielder and Sturdevant.

FINDINGS OF FACT

BASED UPON THE ENTIRE RECORD HEREIN, INCLUDING TESTIMONY OF ALL WITNESSES, STIPULATIONS, DOCUMENTS AND EXAMINATION AND SCRUTINY OF ALL EXHIBITS, THE BOARD FINDS THE FACTS TO BE AS HEREINAFTER SET FORTH:

On June 29, 1966, the Charlotte-Mecklenburg Board of Education caused letters to be sent to dentists practicing in the Charlotte-Mecklenburg area requesting that they indicate, by return mail, whether they wished to participate in the treatment of medically indigent children during the summer of 1966 under the auspices of the Elementary and Secondary Education Act (hereinafter referred to as "ESEA"). Some thirty-six dentists, including the Respondent, made a positive response.

By letter notification and reply forms, parents of children who qualified for dental treatment under the program were given the opportunity to select the dentist with whom they wished to secure appointments for treatment of the children's teeth. Appointments were then made with the dentist, either by the parents or by school personnel who were administering the program.

Thereafter, a letter authorizing the dentist to treat a respective child was forwarded to said dentist. The Respondent saw or treated one hundred eighteen ESEA patients and, relative to each patient, received the following authorization letter from the Mecklenburg County Department of Public Health, which Department was working with the Board of Education in planning and coordinating the program.

Dear Doctor Nash,

This letter is your authorization to treat (name of patient). You may perform routine prophylaxis, topical fluoride, restorations, and extractions without further authorization. Any unusual treatment or procedure may be approved by the dental director.

All work must be completed and statement mailed before August 25, 1966.

Statements must be itemized and in duplicate.

Do not submit a statement for work to be done in the future. Bill only for completed work. Please indicate on your statement whether or not this child needs more care at this time.

Make statement to:
Project ESEA – Title I
Charlotte-Mecklenburg Board of Education
720 East Fourth Street
Charlotte, N.C. 28202

Mail to:
Dental Director – ESEA
1200 Blythe Boulevard
Charlotte, N.C. 28203

Call me for any clarification or confirmation.

Sincerely

/s/ Luby T. Sherrill
Luby T. Sherrill,
D.D.S,M.P.H.
Dental Director, ESEA

The Respondent, as well as all other participating dentists, was asked to indicate on his statement "whether or not this child needs more care at this time". The children who qualified for treatment in the program were from low income families; most of them had never had any prior professional dental care. For this reason the request that the Respondent make the above mentioned indication on his statement was significant and important so that the administrators of the program could make an effort to follow up with further treatment of those children who needed it in the event additional or related program funds were available or became available for that purpose. The requested indication clearly meant a statement as to whether the condition of the teeth of the child was such as to evidence a present need for additional dental treatment.

The Respondent treated his first ESEA patient in late July or early August, 1966; treatment of all ESEA patients was to be completed and statements mailed by August 25, 1966. In the span of some three and one-half to four weeks, the Respondent saw or treated 118 ESEA patients for which he submitted statements in the total mount of $7,058.00.

Shortly after Dr. Luby T. Sherrill, Dental Director of the ESEA program, began receiving statements from the participating dentists, for approval for payment by the office of Mr. James Burch, Director of ESEA activities employed by the Charlotte-Mecklenburg Board of Education, he became concerned because of the amount involved in some of the statements and the large number of children being treated by a relatively few dentists. Consequently, he and two of his associates, Mr. Robert Hunter and Dr. Gunther, on August 12, 1966, visited one of the schools in which children were enrolled who had been treated under the program and made clinical examinations of the teeth of twenty-one of those children. Dr. Sherrill discovered various defects in the dental work performed on those children and discrepancies between the treatment apparently rendered and the treatment for which charges had been made. On August 12, 15, 17, and 20, 1966, Dr. Sherrill and Dr. Gunter made examination of a total of 111 of the children who had been scheduled for treatment; of these, 84 had actually kept their appointments and bills or statements had been rendered by the dentists who had seen the respective children. Of the 84 children who had been seen by a dentist and for whom a statement was sent to the ESEA Dental Director, 21 were determined to involve discrepancies which Dr. Sherrill noted, consisting of billing for work apparently not done, leaving decay in

margins around fillings, and other inappropriate or unacceptable treatment.

Dr. Sherrill conveyed his findings to Mr. James Burch; Mr. Burch, in turn, transmitted the report to Dr. Craig Phillips, Superintendent of the Charlotte-Mecklenburg Schools.

Following the report of Dr. Sherrill, the Charlotte-Mecklenburg Board of Education, through Dr. Phillips and Mr. Burch, asked Dr. Homer Guion, of Charlotte, North Carolina, who was then President of the North Carolina Dental Society, to name a committee of local dentists to investigate all work performed by all dentists with private practices who had participated in the ESEA program during July and August, 1966. Pursuant to this request, Dr. Guion appointed the following named committee of six dentists to conduct the investigation and report to Dr. Phillips: Drs. Paul A. Stroup, Jr., J. G. Rehm, Fleming M. Stone, J. D. Martin, Barry G. Miller, and Worth A. Williams, all of Charlotte, North Carolina.

After the six-man committee was selected and had agreed to serve in the capacity requested, the following procedure was devised and followed for their investigative examination, meetings, determination of discrepancies, and report of findings:

(1) Copies were made of all statements that had been submitted by all dentists who had participated in the program. (36 had indicated a willingness to participate; only 28 actually treated patients and submitted statements). The copies were prepared in such a manner that the letterhead or name and address of the dentist and his

signature were omitted, leaving only the name of the patient, the itemization of treatment rendered and the charge therefor, and the statement thereon in response to the request for information as to whether or not the child needed further dental care or treatment. This was done by and under the supervision of Mr. James Burch.

(2) The six-man committee convened at Central Piedmont College on or about October 6, 1966, for the purpose of clinically examining all of the subject children whom Mr. Burch could locate in the school system and have transported to the college.

(3) The committee used the dental facilities at the college for the purpose of conducting their examinations. The children were identified by numbered tags pinned to their clothing and the charts upon which the examining dentists recorded their findings were numbered so as to correspond with the identification number of the child examined. The name of the child was also placed on his respective chart. On the same day, October 6, 1966, college personnel made x-rays of the teeth of the children who were examined; they were also marked with the names and identification numbers of the respective children.

(4) The charts prepared by the committee of examining dentists and the x-rays made at the college were delivered to Mr. Burch. He and his staff then correlated the charts, x-rays and copies of statements (with identification of the treating dentist deleted or omitted), and relative to each child who had been examined by the six-man committee of dentists, placed those three items in a brown manila envelope.

Mr. Burch prepared a list of all private dentists who had previously indicated they would participate in the program and assigned a number to each one. This numerical identification list was kept in his private files. The identification number of the dentist who had treated a child was placed in one corner of the outside of envelope containing the chart, x-rays and statement pertaining to that child.

(5) All of the envelopes or packets thus assembled were delivered to the assembled six-man committee for their joint examination and review. The committee met a number of times and all members were present at each meeting. Mr. Burch was also present at each meeting, and at the conclusion of each meeting he took possession of all of the envelopes or packets and retained them in his possession until the next committee meeting. At no time were the names of the treating dentists revealed or made known to the committee: identification of the dentist was solely by number.

When the committee agreed upon a discrepancy or discrepancies as to a particular child, it was noted on the outside of the envelope and that envelope was placed in a separate stack or pile. The committee decided upon and utilized the following denominations of discrepancies:

1. Billing for work not done.

2. Dental decay left under fillings.

3. Decayed surfaces left in a tooth which had been filled.

4. Bridging of amalgam filling across two adjacent teeth and/or other unacceptable dental treatment.

5. Stating that dental care was complete when evidence revealed that the care was incomplete.

(6) Through Dr. Guion, the report of the six-man review committee was communicated to Dr. Craig Phillips by letter dated October 27, 1966, the report showing, among other things: (Board Exhibit No. 5)

(a) Of the 601 patients treated by private dentists, the committee had examined 308;

(b) The general procedure followed by the review committee;

(c) That discrepancies were found in the work of four (4) of the thirty-six (36) dentists, accounting for discrepancies noted as to 92 of the 308 children examined who were treated by private dentists;

(d) A list of the committee's interpretation of discrepancy.

(e) A notation that the treating dentists were identified only by an assigned number.

From the information noted on and contained in the envelopes, Mr. Burch compiled and assimilated the discrepancies chargeable to the Respondent who was identified as dentist Number 22. (See: Board Exhibit No. 6). This information was documented in the manner and form which has heretofore been set forth in the preamble of this decision. (Board Exhibit No. 30). The Committee examined 72 of the 118 patients treated by the Respondent; discrepancies were noted as to 33 of them.

As a result of meetings and conferences involving the Respondent, his counsel, Dr. Craig Phillips, and administrative personnel concerned with the administration of the ESEA program, the Respondent accepted $4,003.21 as payment for his services.

On December 21, 1966, the Board by subpoena, obtained possession of the records, reports, x-rays and related documents pertaining to all of the dentists who had particpated in the program. Until that time, the Board had, in no way, been involved in the situation either directly or indirectly.

Thereafter, Drs. Clifford M. Sturdevant, Herman E. Gaskins, and Fred C. Fielder were requested, by the Board, to review the report of the six-man committee, the post-operative x-rays made at the College, and all other documents or other matters relative to the four dentists who were indicated as having discrepancies in their work or billing as well as the other material then in the possession of the Board. In response to this request, these three men met in Charlotte, North Carolina, in early February, 1967, reviewed the committee report, examined all records pertaining to the four dentists charged with discrepancies, clinically examined 13 of the children in question, and checked random samples of the records of dentists who had not been charged with discrepancies.

Their initial report to the Board was submitted under date of February 21, 1967. (Board Exhibit No. 7). As to the Respondent, they verified twenty of the thirty-three patient discrepancies previously reported by the committee of six. By letter dated March 6, 1967, (Board Exhibit No. 7-A) the three-man panel submitted a

particularized report of their findings as to specific patients of the Respondent. (Board Exhibit No. 7-B). This documentation has heretofore been fully set forth in the preamble of this decision and is hereby fully incorporated by reference into the body of these findings of fact.

The nomenclature utilized by the Respondent for the written identification of teeth within the mouth in accordance with their relative positions was determined to be as follows: primary dentition (deciduous teeth) were identified alphabetically beginning with the maxillary (upper) right second molar, designated "A", and continuing serially around the entire maxillary dentition ("A" through "J") to the maxillary left second molar; thence, to the mandibular (lower) LEFT second molar, designated "K", and continuing serially around the entire mandibular dentition ("K" through "T") to the mandibular right second molar. Secondary dentition (permanent teeth) were identified numerically beginning with the maxillary right third molar, designated "1", and continuing serially around the entire maxillary dentition ("1" through "16") to the maxillary left third molar; thence, to the mandibular (lower LEFT third molar, designated "17", and continuing serially around the entire mandibular dentition ("16" through "32") to the mandibular right third molar.

The various surfaces of the teeth are identified as follows:

(1) "O" represents the occlusal or biting surface;

(2) "M" represents the mesial surface, the side of the tooth toward the front center or midline of the mouth;

(3) "D" represents the distal surface, the side of the tooth toward the back of the mouth;

(4) "L" represents the lingual surface, the side of the tooth toward the tongue;

(5) "F" represents the facial surface, the side of the tooth toward the cheek or lips; this is also occasionally referred to as the buccal surface.

Hereinafter, the nomenclature for identification of teeth and the surfaces of teeth set forth above will be used rather than the descriptive words.

Relative to various of the patients of the Respondent and the matters set forth in the initial Notice and the subsequent Notice of Hearing served upon the Respondent, we find the facts to be as follows:

(1) EDWARD WHITE: (a) The Respondent placed a two-surface restoration in #31 and left caries under the restoration; the caries in this tooth was described as "massive" by the three-man review panel who clinically examined this child in February, 1967. The x-ray of October 6, 1966, reveals the caries to be present in the tooth. (b) The Respondent charged for a one-surface restoration in #29 but the tooth was not, in fact, restored, even though sufficiently carious at the time of treatment (August 19, 1966) to require restorative treatment. It does appear that the Respondent may have placed a one-surface restoration in #30 for which no charge was made, which would offset the likelihood of an overcharge.

The fact remains, however, that the Respondent failed to treat #29, but indicated on his statement, "Dental

Treatment Complete". It appears from the Respondent's chart on this patient (Board Exhibit 14) that the Respondent indicated the presence of occlusal caries of that tooth at the time of examination, then failed to treat the tooth.

We do not think the Respondent's explanation of his interpretation of the directive in the authorization letters, that the treating dentist :"indicate on your statement whether or not this child needs more care at this time", to be valid or reasonable. The instruction is too simple and too clear to bear such a tortured construction. In each instance herein in which the Respondent has indicated "Dental Treatment Complete" and the evidence establishes that further treatment was needed at that time, we find that his notation constitutes a misrepresentation as to the dental condition of the patient and of the nature and extent of his services.

(2) McDONALD (MACK) CALDWELL: The Respondent charged for a one surface restoration in #30 which, apparently, was not done. The x-ray of October 6, 1966, revealed occlusal caries in the tooth; the three-man panel's clinical examination in February, 1967, verified the caries and absence of a restoration. The Respondent stated that he did prepare #30 for an occlusal restoration. His pre-operative chart does show decay on the occlusal surface. (Nash Ex. No. 1).

This patient was treated August 15, 1966, and the statement marked, "Dental treatment complete".

(3) RAY McINNIS: (a) Teeth "A" and "J" were extracted by the Respondent and portions of the roots left in the socket. (b) A charge was made for extracting

"L", which tooth was still in the mouth at the time of clinical examination in February, 1967.

It appears that the Respondent may have, in fact, extracted "N" rather than "L" and that the billing was a clerical error. We find this questionable since "N" normally exfoliates between the ages of 6 and 8 years and this child was 8 years old when treated.

Relative to leaving the roots of "A" and "H", the Respondent's statement carries no indication as to whether or not the patient needed further treatment. His office chart (Nash Ex. No. 12) does, however, bear the notation, "complete". Leaving these root structures following extraction was poor, sub-standard dentistry. This patient definitely should have been closely followed for further treatment and removal of the same.

(4) RUFUS CLINDON: The Respondent treated this patient August 17, 1966, and his statement noted, "Dental treatment complete".

As a matter of fact, #3 had a large occlusal carious lesion which he left untreated. This caries was apparent on his pre-operative x-rays and restorative treatment of the tooth, admittedly, was indicated. It is noteworthy that the Respondent failed to even mark his office chart (Nash Ex. #13) to reflect the condition of this tooth. Obviously, this child needed further dental treatment and neglecting to treat or even note the condition of a carious permanent tooth, then representing that dental treatment was complete, was highly irregular.

(5) LINDA BRAWLER (sic: Brawley): The Respondent charged for two-surface restorations in "A" and "T"

and for a one-surface restoration in "L" which were not done, resulting in an overcharge. None of the teeth appeared, from the x-ray of October 6, 1966, to have been prepared for a restoration. Additionally the x-rays reflected mesial and occlusal caries on "A" and occlusal caries on "T".

(6) JEROME HOWIE: We find that a great deal of the difficulty surrounding this patient arose from poor records and clerical errors in the Respondent's office. Tooth #14 was billed for a three-surface restoration, a four-surface restoration and extraction. It apparently was extracted.

It appears that the three-surface restoration charged to #14 may have been placed in #19 and not billed as such; that the charge for extraction of "I" should have been charged to #14. "I" was not, in fact, extracted. Nevertheless, there remains an overcharge relative to the four-surface restoration charged to #14.

"A" was billed for a one-surface restoration not evidenced by the post-operative x-rays. The Respondent stated that he placed a lingual restoration in the tooth and it must have fallen out.

(7) ARNITA CALDWELL: The Respondent placed a restoration in #19 and left decay under the restoration. There is a possibility that the x-ray radiolucency interpreted to be decay is representative of an application of a calcium hydroxide base. If so, it is, on its face, poor and sub-standard dentistry in this instance.

(8) DORIS FLETCHER: The Respondent placed a restoration in #30 and left caries under and distal to the same.

(9) CLIFTON McCLAIN: The Respondent placed a OL restoration in #14 and left untreated decay on th distal surface when proper treatment would have require placement of a distal restoration. His statement noted "Dental Treatment Complete", hence wrongfully rep resenting that the child needed no further dental care o treatment at that time.

(10) TONY THOMPSON: The initial indication tha restorations were charged for on #18 and #3 but no done appear to result from Respondent's clerical errors It seems that the restorations may, in fact, have beer placed in #19 and #2 and were erroneously billed.

There is, however, a charge for a two-surface restora tion in "J" which was not done. The Respondent's chart called for an OL restoration in the tooth, but he neither prepared the cavity nor placed the restoration.

(11) TREVA WATTS: The Respondent charged for a two-surface restoration in "L". The patient was treated August 22, 1966; post-operative x-rays made October 6 1966, disclose distal caries in the tooth and that it was untreated. His statement indicated, "Dental treatment complete", even though his preoperative charting had called for a DO restoration in this tooth.

(12) JAMES MORRISON: Tooth "J" was grossly carious; the Respondent charted it for extraction and charged for extraction of it. The tooth was not, in fact extracted. The Respondent's statement contained the notation, "Dental treatment complete".

(13) BRENDA McKNIGHT: The Respondent extracted #19 and left a large portion of the root of said

tooth in the socket. He indicated on his statement that dental treatment was complete when, in fact, treatment was decidedly incomplete so long as the broken root of #19 was permitted to remain in the mouth.

(14) MICHAEL BAILEY: A charge was made for a two-surface restoration on "J". The evidence leads to the conclusion that "J" was not carious, had no preparation for a restoration, and was not restored. This was another instance of charging for work not done.

(15) ADRIAN PATTON: The Respondent placed an amalgam restoration in the mouth of this patient that covered a large portion of both the first and second lower right deciduous molars, which restoration was categorized as an amalgam bridge. On clinical examination of this patient October 6, 1966, and February, 1967, the bridge was found to be mobile en masse and surrounded by caries, said restoration being so loose that it could be lifted away from the tooth cavity. It appears that the restoration was not properly placed so as to achieve necessary retention form.

(16) L'TANYA BYNUM: (a) "S" was billed for a 3 surface restoration and none was evidenced by the post-operative x-rays made October 6, 1966. The Respondent stated that he placed the restoration and it must have fallen out. (b) "A" and "I" were billed for two-surface restorations; "J" and "B" were billed for one-surface restorations. The Respondent admits that these restorations were not done. The teeth were carious. (c) The restorations that were placed in "A" and "S" were lost as of the date of the post-operative x-rays.

Respondent's statement and his office chart indicate treatment of this child completed.

(17) THERON BARRINO: A one-surface restoration was charged to tooth #3 which was not done. There was occlusal enamel fissure caries evident upon clinical examination October 6, 1966, but no restoration.

A three-surface restoration was charged for #14 and only a one surface restoration was done.

(18) ARTHUR CHERRY: The Respondent left caries in the mesial of the maxillary first molar that required restorative dentistry. His statement contained the notation, "Dental treatment complete".

We further find as a fact that a letter identified and introduced into evidence herein as Board Exhibit No. 8 was mailed from the Respondent's office on his letterhead and over his signature and that it contains verbiage constituting the solicitation of professional business. The Respondent's attempted explanation of the letter simply does not sound of reason, taking into account the language of the letter itself.

Due to the recommendations of the three-man review panel or advice of counsel, all matters pertaining to patients who are not the subject of specific findings of fact hereinabove were removed from consideration and are dismissed.

We find that leniency and reason positively prevailed in the attitude of the six-man review committee and the three-man review panel relative to their investigation and evaluation of the matters here in question. We are of the further definite opinion that the evidence which has been presented to this Board clearly demonstrates that, with respect to the patients here involved, the Respondent

engaged in professional practices far below the standard acceptable in this State, much to the detriment of the Respondent, his patients, and the profession in general. It is obvious that the Respondent carelessly attempted to perform more work on more patients in a very limited period of time than he could competently manage.

CONCLUSIONS OF LAW

The North Carolina State Board of Dental Examiners, based upon the foregoing Findings of Fact, does hereby conclude, as a matter of law, that the Respondent has been guilty of willful neglect, unprofessional conduct, and/or malpractice in the practice of dentistry in this State, all in violation of Section 90-41 of the General Statutes of North Carolina, and in the following particular respects relative to the various patients here involved and the professional practices and procedures engaged in by the Respondent as related to the Findings of Fact:

(1) EDWARD WHITE:

(a) Leaving caries under the restoration placed in #31 constituted willful neglect.

(b) Failure to treat the caries on #29, then misrepresenting that dental treatment was complete was willful neglect and unprofessional conduct in the practice of dentistry.

(2) McDONALD (MACK) CALDWELL:

Failure to place a restoration in carious #30, charging for a restoration in the same, and misrepresenting that dental treatment was complete constituted willful neglect and unprofessional conduct in the practice of dentistry.

(3) RAY McINNIS:

(a) Leaving the fractured roots of "A" and "J" in the sockets following extraction of the teeth evidences dentistry of a standard not acceptable in this State and is malpractice and willful neglect, particularly since the Respondent noted on his office chart that treatment of this child was complete.

(4) RUFUS CLINDON:

The Respondent's failure to properly treat the caries on #3 followed by his representing that dental treatment of this patient was complete constitutes willful neglect and unprofessional conduct in the practice of dentistry.

(5) LINDA BRAWLER (sic; Brawley):

Charging for restoration not performed on "A", "T" and "L" particularly when "A" and "T" were carious, constituted unprofessional conduct and willful neglect in the practice of dentistry.

(6) JEROME HOWIE:

We conclude that the only clear violation here justified is that of unprofessional conduct in charging for services not performed relative to #14.

(7) ARNITA CALDWELL:

Leaving decay under the restoration in #19 (or improperly placing the calcium hydroxide at the expense of the health of the tooth) is willful neglect in the practice of dentistry.

(8) DORIS FLETCHER:

Leaving caries under the restoration on #30 and distal thereto constituted willful neglect in the dental treatment of this patient.

(9) CLIFTON McCLAIN:

Leaving the indicated decay on #14 while placing a restoration on other surfaces of the same was willful negligence in the practice of dentistry, and misrepresenting that treatment was complete was unprofessional conduct.

(10) TONY THOMPSON:

Respondent was guilty of unprofessional conduct in charging for a restoration not placed in "J".

(11) TREVA WATTS:

Charging for a two-surface restoration in "L" that was not performed constituted unprofessional conduct in the practice of dentistry.

(12) JAMES MORRISON:

Billing for extraction of a carious tooth which was left in the mouth and, additionally, representing treatment to be complete constituted willful neglect and unprofessional conduct in the practice of dentistry.

(13) BRENDA McKNIGHT:

Leaving a fractured root in the socket following an extraction, when the same might be injurious to the oral health of the patient, constituted a combination of willful neglect and malpractice. Stating that treatment of this patient was complete, under such circumstances, was unprofessional conduct in the practice of dentistry.

(14) MICHAEL BAILEY:

Charging or billing for professional services not performed was unprofessional conduct.

(15) ADRIAN PATTON:

The evidence here is inconclusive as to any breach of the law.

(16) L'TANYA BYNUM:

Billing or charging for services not performed relative to "A", "I", "J" and "B" and further misrepresenting that treatment of this patient was complete when the aforesaid teeth were carious and not treated was unprofessional conduct in the practice of dentistry.

(17) THERON BARRINO:

Again, charging for professional services not rendered constituted unprofessional conduct.

(18) ARTHUR CHERRY:

Representing that treatment was complete when the same was not true, constituted unprofessional conduct.

This Board also concludes, as a matter of law, that the letter issued from the Respondent's office and herein identified as Board Exhibit No. 8 constituted solicitation for professional business, in violation of G.S. Section 90-41.

We conclude that the foregoing particularized conclusions, taken both severally and collectively support the general conclusion that the Respondent herein has been guilty of malpractice, willful neglect, and unprofessional conduct in the practice of dentistry.

We further conclude, as a mixed matter of law and fact, that the investigation preceding this hearing, all pre-hearing discovery proceedings, and this hearing were conducted lawfully, fairly, impartially, and without any bias toward the Respondent.

This Board is of the very definite opinion that the foregoing Findings of Fact and Conclusions of Law are

more than sufficient to justify the suspension of the Respondent's license to practice dentistry. We are, however, more concerned with the strengthening of the Respondent's professional competency and abilities and with the ultimate protection of the health and welfare of the public from which he draws his professional practice than with penalizing the Respondent.

IT IS, THEREFORE, ORDERED that the license of Dr. George T. Nash to practice dentistry in the State of North Carolina is hereby suspended, effective twenty (20) days after service of this Opinion and Order upon him, and shall be and remain suspended unless he has or until he shall become enrolled in and attending a school of dentistry having accreditation requirements recognized by the American Dental Association Council on Dental Education and shall be engaged in a course of clinical operative restorative dentistry in which he will operate on a clinical floor under the supervision, direction and instruction of the regularly designated instructor in the operative and restorative department of said school for a prescribed course of not less than 100 chronological clinical hours; or, as an alternative, Dr. Nash may enroll and attend such dental school in a concentrated continuing education program within the limits of said school and approved by the North Carolina State Board of Dental Examiners.

In the event the said Dr. Nash meets the requirements of enrollment and commencement of class attendance hereinabove directed prior to the expiration of twenty (20) days from the date of service of this Order, the initial suspension of license hereinabove ordered will be ineffective so long as he further complies with the terms, provisions and conditions hereinafter set forth.

In the event the initial suspension of license hereinabove ordered does become effective, the said Dr. Nash's license shall immediately be reinstated upon receipt of due certification from the Administrator or Dean of the School of Dentistry at which he is in attendance that the said Dr. Nash has actively commenced one of the courses of study hereinabove required, subject, however, to the following terms and conditions:

(a) He must continually engage in the pursuit of the above prescribed course of study, without voluntary interruption of the same during the regular hours of said course, until such time as the Administrator of the School of Dentistry attended by him certifies to this Board that said Dr. Nash has satisfactorily concluded said course of study;

(b) During the period of time that he is engaged in the aforesaid course of study, said Dr. Nash may engage in the practice of dentistry in the State of North Carolina, provided, however, that he shall, during said time, at the request of the Board, make available to the Board his pre-operative and post-operative charts and his pre-operative and post-operative x-rays pertaining to any and all patients upon whom he may perform any operative restorative and/or surgical procedure during said period of time; this condition shall exist and shall remain in force and effect for a period of twelve (12) months from the date said Dr. Nash commences the course of study above specified or until he completes said course of study, whichever shall be the longer period.

In the event the said Dr. George T. Nash violates the terms and provisions of sub-paragraph (a) above, his license shall be suspended immediately and shall remain

suspended until such time as he resumes compliance with the terms and conditions of said subparagraph (a);

In the event the said Dr. George T. Nash violates any of the terms and conditions of sub-paragraph (b) above, his license shall forthwith be suspended for thirty (30) days for each separate violation thereof.

In no event shall the initial suspension of license hereinabove ordered lapse into abeyance until such time as said Dr. George T. Nash is duly enrolled in and actively engaged in the aforesaid course of study and such fact is duly certified to this Board by notice forwarded to the following address:

Dr. Clinton C. Diercks, Secretary
N.C. State Board of Dental Examiners
Morganton, North Carolina

The Respondent is hereby advised that he has the right, under Section 150-24 of the General Statutes of North Carolina, to appeal the decision of this Board for review in the Superior Court of Wake County, the Superior court of Mecklenburg County or in any other Superior Court in this State which might be agreed upon between said Respondent and this Board. Please take notice that, in order to obtain said judicial review, you must, WITHIN TWENTY (20) DAYS after the service upon you of this Decision and Order, file a written notice of appeal with the Secretary of this Board stating all exceptions taken to the decision and indicating the court in which appeal is to be heard. Said notice of appeal shall be filed with the Secretary of this Board at the following address:

Dr. Clinton C. Diercks, Secretary
N.C. State Board of Dental Examiners
P.O. Box 490
Morganton, North Carolina

Failure to file said notice of appeal in the manner and within the time hereinabove stated shall operate as a waiver of your right to appeal and result in the decision of this Board becoming final.

This is the unanimous opinion of all of the members of the North Carolina State Board of Dental Examiners and the same is duly entered this 30th day of July, 1968.

GUY R. WILLIS, D.D.S.
CLINTON C. DIERCKS, D.D.S.
S. L. BOBBITT, D.D.S.
WADE H. BREELAND, D.D.S.
R. B. BARDEN, D.D.S.
FREEMAN C. SLAUGHTER, D.D.S.

STAY ORDER (HAWKINS) (Filed Aug. 15, 1968)

This cause coming on to be heard upon motion of the Respondent herein for stay of execution of the Order of the North Carolina State Board of Dental Examiners entered in this cause on July 30, 1968, and it appearing to the Court that there is good cause to allow the stay pending disposition by the Court of Respondent's appeal from said decision.

It Is, Therefore, Ordered and Decreed that the decision and Order of the North Carolina State Board of Dental Examiners entered in this cause on July 30, 1968, be and

the same is hereby stayed in its entirety pending further orders of the Court.

This 15th day of August, 1968.

/s/ FRED HASTY
JUDGE PRESIDING

STAY ORDER (STINSON) (Filed Aug. 15, 1968)

This cause coming on to be heard upon motion of the Respondent herein for stay of execution of the Order of the North Carolina State Board of Dental Examiners entered in this cause on July 30, 1968, and it appearing to the Court that there is good cause to allow the stay pending disposition by the Court of Respondent's appeal from said decision;

It Is, Therefore, Ordered and Decreed that the decision and Order of the North Carolina State Board of Dental Examiners entered in this cause on July 30, 1968, be and the same is hereby stayed in its entirety pending further orders of the Court.

This 15th day of August, 1968.

/s/ FRED HASTY
JUDGE PRESIDING

STAY ORDER (NASH) (Filed Aug. 15, 1968)

This cause coming on to be heard upon motion of the Respondent herein for stay of execution of the Order of the North Carolina State Board of Dental Examiners entered in this cause on July 30, 1968, and it appearing

to the Court that there is good cause to allow the stay pending disposition by the Court of Respondent's appeal from said decision.

It Is, Therefore, Ordered and Decreed that the decision and Order of the North Carolina State Board of Dental Examiners entered in this cause on July 30, 1968, be and the same is hereby stayed in its entirety pending further orders of the Court.

This 15th day of August, 1968.

/s/ FRED HASTY
JUDGE PRESIDING

SUPERIOR COURT JUDGMENT (HAWKINS) (Filed March 20, 1968)

This cause is an appeal by Dr. Reginald A. Hawkins (Respondent) from a decision made and entered by the North Carolina State Board of Dental Examiners (Board) on July 30, 1968. Respondent's Notice of Appeal and his Statement of Exceptions were filed in apt time. This cause was calendared for hearing and was heard and considered by the undersigned Presiding Judge at a Special Session of Mecklenburg County Superior Court on February 1, 1971, and succeeding days. The Respondent and his attorneys, Julius L. Chambers and Fred Hicks, of the Mecklenburg County Bar, and the Board's attorney, Thomas M. Starnes, of the Burke County Bar, were present during all judicial proceedings. Counsel for the respective parties were heard and their Briefs and citations of authority were received and considered by the Court.

By its aforesaid decision of July 30, 1968, the Board found that Respondent had been guilty of eight (8) separate instances of willful neglect, four (4) separate instances of malpractice, and nine (9) separate instances of unprofessional conduct, and made and entered Conclusions of Law arising therefrom.

To the Board's Findings of Fact, Conclusions of Law, and Order, the Respondent noted nine (9) exceptions and prayed judgment of this court setting aside the Board's Order and dismissing the Board's charges against him.

By various of his exceptions, Respondent contends that the North Carolina General Assembly, in enacting Section 90-41 of the General Statutes of North Carolina, used words and phrases which are vague and indefinite and failed to establish clear and definite standards for determining the willful neglect, unprofessional conduct, malpractice, and other acts of conduct on the part of North Carolina dentists which constitute grounds for the imposition by the Board of allegedly quasi-criminal penalties, and that the action of the Board in this case, therefore, violated his constitutional rights of due process and equal protection of the law.

The acts of unprofessional conduct, professional willful neglect, and malpractice which are statutory grounds for suspension or revocation of a dentist's license to practice his profession have long been recognized and understood by the law and the dental profession. The words and phrases so used by the North Carolina General Assembly and complained of by the Respondent have had well recognized legal significance and meaning, when applied to or used in connection with the professions of medicine and dentistry, to wit:

(a) UNPROFESSIONAL CONDUCT: That which, by common understanding and general opinion, is considered to be immoral, dishonorable, or disreputable in the professional practice; conduct exhibiting intellectual or moral incompetency in the professional practice, or acts of a nature likely to jeopardize the interest of the public.

(b) WILLFUL NEGLECT: That degree of a lack of due care evidencing a deliberate purpose not to discharge some duty necessary for the health, safety or welfare of another, which duty the person owing it has assumed by contract, or which is imposed upon the person by operation of law.

(c) MALPRACTICE: Failure of a dentist, who undertakes to render professional services, either to (i) possess the degree of professional learning, skill, and ability which others similarly situated ordinarily possess, or (ii) to exercise reasonable care and diligence in the application of his knowledge and skill to his patient's case, or (iii) to use his best judgment in the treatment and care of his patient.

Malpractice, willful neglect, and unprofessional conduct are words and phrases which describe acts and conduct with such definiteness and clarity that charges brought under the statute do no violence to Respondent's constitutional rights of due process and equal protection of the laws.

Respondent also contends that this treatment of school children under a program of the local school board which was funded by a grant from an agency of the Federal Government brought his acts and conduct in

connection therewith within the exemption set forth in G.S. Section 90-29(3). That statutory section exempts from the provisions of Chapter 90, Article 2. "The practice of dentistry in the discharge of their official duties by dentists in the United States Army, the United States Navy, the United States Public Health Service, the United States Veterans Bureau, or other federal agency".

Respondent does not contend that he treated the school children named in this cause in the discharge of any official duty he had as a dentist in the Army, Navy, Public Health Service, or Veterans Bureau. By his exception, however, he contends that he was practicing dentistry upon said children while in the discharge of official duties as a dentist in some "other federal agency".

The record contains no evidence upon which to found such a contention. The evidence tends to show that, at the times in question, Respondent was engaged in the private practice of dentistry; that his patients qualified for treatment in the program by virtue of economic background; that the patients had the choice of selecting the dentist by whom they desired to be treated; that the contractual terms and conditions for the treatment of said children were laid down by agents or officials of the Charlotte-Mecklenburg School Administration; and that the Respondent was compensated by said School Administration, for said services with funds granted to the Administration by a federal agency. There was no contractual relationship between Respondent and any federal agency. The Board was not, therefore, deprived of jurisdiction of this cause by virtue of any of the terms or reservations set forth in G.S. Section 90-29(3).

Upon a review and consideration of the entire record herein, the court finds that each Finding of Fact and Conclusion of Law made and entered by the Board relative to the thirteen (13) patients of Respondent named in his Exception No. 2 are supported by competent, material and substantial evidence heard and considered by the Board. The court, having considered and weighed the evidence heard by the Board, finds that Respondent has been guilty of those various acts of malpractice, willful neglect, and unprofessional conduct in the practice of dentistry in connection with his treatment of the following named patients, as set forth in the Decision of the Board, *viz:* Ricky Stafford, Marvin Grier, Cassandra Sloan, Reginald Funderburk, Norris Sanders, James Thompson, Darryl Ross, Thomas Reid, Cavin Barnes, Charles Carothers, Dewana Carr, Allen Payne, and Eric Lee.

Prior to the hearing conducted by the Board in this cause, Respondent filed a Motion seeking a hearing on the charges preferred against him by the Board before "an impartial Board, tribunal or committee", contending that the Board could not afford him a fair and impartial hearing on the aforesaid charges because said Board was, in effect, selected and dominated by the North Carolina Dental Society and that the North Carolina Dental Society was racially biased against Respondent—a Negro—and members of his race.

The Motion was denied by the Board prior to the hearing; the same Motion was renewed at the hearing and was again denied. The Board found and held that it was a lawfully organized agency of the State of North Carolina and that it alone was authorized, by law, to conduct a

hearing and make lawful findings upon the charges pending against the Respondent. Respondent excepts to the denial of his Motion.

The Board is vested with administrative and quasi-judicial responsibility. It has the authority to conduct investigations, prefer charges, hold hearings on those charges, and, in appropriate instances, take punitive action against those practicing dentistry in this state. (N.C. G.S. Sections 90-27, 90-29, 90-40, 90-41, 150-10, 150-11, 150-16).

Since a license is not a contract and gives the holder no right to continue in the practice in the future unrestricted, it follows that any license may be revoked for a good cause, and that such revocation alone is not a taking of property without due process of law. It has been held that the power of a state to require a license implies power to revoke one which has been improperly issued. With respect to the great majority of questions pertaining to the matter of revocation, there is no possible distinction between refusing to grant a license and revoking one already granted. Both acts are an exercise of the police power. The power exercise and the object of its exercise are in each case identical, namely, to exclude an incompetent or unworthy person from the practice. . . .

A majority of the cases passing on the question have held that statutes providing for the revocation of license of physicians, surgeons, or dentists are valid.

As has been seen, there is, in most respects, no real distinction between refusing to grant a license and

the revocation of one which has been granted, and it is within the police power of the state to delegate to the same body or tribunal which it has empowered to grant licenses the power to revoke them and to vest such tribunal with the power to investigate and try charges for the revocation of a license. Such a delegation is consistent with the constitutional guaranty of due process of law. The power conferred upon a state board to revoke a. . .license for cause is a discretionary and administrative, and not a judicial, function. . .as an incident to the establishment of an administrative tribunal empowered to make a final determination of whether or not the license of a medical or dental practitioner shall be revoked for a stated statutory legal cause, the legislature may confer upon it power to determine legal questions necessarily arising in the course of revocation proceedings. (Am. Jur., *Physicians and Surgeons*, Sections 45, 46, 47 and authorities therein cited.)

Respondent is, however, entitled to be heard on his Motion and to introduce evidence, if any he has, in support of his contention. The hearing should be in the nature of a *voir dire*. In this case, it is preferable that the *voir dire* should be conducted by the court in accordance with the provisions of N.C. G.S. Sections 150-24 and 150-27.

Upon the facts found and conclusions of law arising therefrom, the Board entered the following Order:

This Board is of the very definite opinion that the foregoing Findings of Fact and Conclusions of Law are more than sufficient to justify the suspension of

the Respondent's license to practice dentistry. We are, however, more concerned with the strengthening of the Respondent's professional competency and abilities and with the ultimate protection of the health and welfare of the public from which he draws his professional practice than with penalizing the Respondent.

It is, therefore, ordered that the license of Dr. Reginald A. Hawkins to practice dentistry in the State of North Carolina is hereby suspended, effective twenty (20) days after service of this Opinion and Order upon him, and shall be and remain suspended unless he has or until he shall become enrolled in and attending a school of dentistry having accreditation requirements recognized by the American Dental Association Council on Dental Education and shall be engaged in a course of clinical operative restorative dentistry in which he will operate on a clinical floor under the supervision, direction and instruction of the regularly designated instructor in the operative restorative department of said school for a prescribed course of not less than 100 chronological clinical hours; or, as an alternative, Dr. Hawkins may enroll and attend such dental school in a concentrated continuing education program within the limits of said school and approved by the North Carolina State Board of Dental Examiners.

In the event the said Dr. Hawkins meets the requirements of enrollment and commencement of class attendance hereinabove directed prior to the expiration of twenty (20) days from the date of service of this Order, the initial suspension of license

hereinabove ordered will be ineffective so long as he further complies with the terms, provisions and conditions hereinafter set forth.

In the event the initial suspension of license hereinabove ordered does become effective, the said Dr. Hawkins' license shall immediately be reinstated upon receipt of due certification from the Administrator or Dean of the school of dentistry at which he is in attendance that the said Dr. Hawkins has actively commenced one of the courses of study hereinabove required, subject, however, to the following terms and conditions:

(a) He must continually engage in the pursuit of the above prescribed course of study, without voluntary interruption of the same during the regular hours of said course, until such time as the Administrator of the school of dentistry attended by him certifies to this Board that said Dr. Hawkins has satisfactorily concluded said course of study;

(b) During the period of time that he is engaged in the aforesaid course of study, said Dr. Hawkins may engage in the practice of dentistry in the State of North Carolina; provided, however, that he shall, during said time, at the request of the Board, make available to the Board his pre-operative and post-operative charts and his pre-operative and post-operative x-rays pertaining to any and all patients upon whom he performs any operative restorative procedure during said period of time; this condition shall exist and shall remain in force and effect for a period of twelve (12) months from the date said Dr. Hawkins commences the course of study above

specified or until he completes said course of study, whichever shall be the longer period.

In the event the said Dr. Reginald A. Hawkins violates the terms and provisions of subparagraph (a) above, his license shall be suspended immediately and shall remain suspended until such time as he resumes compliance with the terms and conditions of said subparagraph (a);

In the event the said Dr. Reginald A. Hawkins violates any of the terms and conditions of subparagraph (b) above, his license shall forthwith be suspended for thirty (30) days for each separate violation thereof.

In no event shall the initial suspension of license hereinabove ordered lapse into abeyance until such time as said Dr. Reginald A. Hawkins is duly enrolled in and actively engaged in the aforesaid course of study and such fact is duly certified to this Board by notice forwarded to the following address:

Dr. Clinton C. Diercks, Secretary
N.C. State Board of Dental Examiners
Morganton, North Carolina.

Upon a proper finding that a licensee has been guilty of those acts of which the Board found Respondent guilty, N.C. G.S. Section 90-41 provides that the Board "may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed".

Unlike the courts of this state (see N.C. G.S. Section 15-197) the Board does not have the authority to suspend, upon conditions imposed, the penal provisions of its orders entered pursuant to N.C. G.S. Section 90-41.

The order entered in this cause, therefore, was in excess of the authority of the Board, was void, and must be set aside.

IT IS, THEREFORE, ORDERED AND ADJUDGED:

1. That the Findings of Fact and the Conclusions of Law based thereon relative to the Respondent's patients above named, to wit: Ricky Stafford, Marvin Grier, Cassandra Sloan, Reginald Funderburk, Norris Sanders, James Thompson, Darryl Ross, Thomas Reid, Cavin Barnes, Charles Carothers, Dewana Carr, Allen Payne, and Eric Lee, are affirmed;

2. That the Order of the Board suspending Respondent's license to practice dentistry, upon failure to comply with certain conditions therein imposed, is set aside;

3. That this cause is remanded to the Board for reconsideration and for the entry of an appropriate lawful order;

4. That said order shall, when entered by the Board, be served upon the Respondent as provided by law;

5. That, thereafter, the Respondent shall have the right to appeal to this court, in the manner provided by Chapter 150 of the North Carolina General Statutes, to the end that a judicial hearing may be conducted and a determination made regarding the legal efficacy of the

hearing conducted by the Board as the same relates to the prior motion of the Respondent for a hearing before "an impartial Board, tribunal or committee";

6. That the effectiveness of any punitive order entered by the Board pursuant hereto shall be stayed pending the determination to be made upon any appeal therefrom as aforesaid;

7. That, in the event of such an appeal from y order of the Board, said Board shall certify the record herein to this court in the manner and form required by law, and this cause shall thereupon be peremptorily calendared for judicial determination of Respondent's aforesaid motion;

8. That, except as herein set forth or otherwise provided in this Judgment, the Respondent's exceptions are overruled and the decision of the Board is affirmed.

This 20 day of March, 1971.

A. PILSTON GODWIN, JR.
Judge Presiding

EXCEPTION NO. 62

SUPERIOR COURT JUDGMENT (STINSON) (Filed March 20, 1971)

This cause is an appeal by Dr. John P. Stinson (Respondent) from a decision made and entered by the North Carolina State Board of Dental Examiners (Board) on July 30, 1968. Respondent's Notice of Appeal and his Statement of Exceptions were filed in apt time. This cause was calendared for hearing and was heard and

considered by the undersigned presiding Judge at a Special Session of Mecklenburg County Superior Court on February 1, 1971, and succeeding days. The Respondent and his attorneys, Julius L. Chambers and Fred Hicks, of the Mecklenburg County Bar, and the Board's attorney, Thomas M. Starnes, of the Burke County Bar, were present during all judicial proceedings. Counsel for the respective parties were heard and their Briefs and Citations of authority were received and considered by the court.

By its aforesaid decision of July 30, 1968, the Board found that Respondent had been guilty of six (6) separate instances of willful neglect, two (2) separate instances of malpractice, and four (4) separate instances of unprofessional conduct, and made and entered Conclusions of Law arising therefrom.

To the Board's Findings of Fact, Conclusions of Law, and Order, the Respondent noted nine (9) exceptions and prayed Judgment of this court setting aside the Board's Order and dismissing the Board's charges against him.

By various of his exceptions, Respondent contends that the North Carolina General Assembly, in enacting Section 90-41 of the General Statutes of North Carolina, used words and phrases which are vague and indefinite and failed to establish clear and definite standards for determining the willful neglect, unprofessional conduct, malpractice, and other acts of conduct on the part of North Carolina dentists which constitute grounds for the imposition by the Board of allegedly quasi-criminal penalties, and that the action of the Board in this case, therefore, violated his constitutional rights of due process and equal protection of the law.

The acts of unprofessional conduct, professional willful neglect, and malpractice which are statutory grounds for suspension or revocation of a dentist's license to practice his profession have long been recognized and understood by the law and the dental profession. The words and phrases so used by the North Carolina General Assembly and complained of by the Respondent have had well recognized legal significance and meaning, when applied to or used in connection with the professions of medicine and dentistry, to wit:

(a) UNPROFESSIONAL CONDUCT: That which, by common understanding and general opinion, is considered to be immoral, dishonorable, or disreputable in the professional practice; conduct exhibiting intellectual or moral incompetency in the professional practice, or acts of a nature likely to jeopardize the interest of the public.

(b) WILLFUL NEGLECT: That degree of a lack of due care evidencing a deliberate purpose not to discharge some duty necessary for the health, safety or welfare of another, which duty the person owing it has assumed by contract, or which is imposed upon the person by operation of law.

(c) MALPRACTICE: Failure of a dentist, who undertakes to render professional services, either to (i) possess the degree of professional learning, skill, and ability which others similarly situated ordinarily possess, or (ii) to exercise reasonable care and diligence in the application of his knowledge and skill to his patient's case, or (iii) to use his best judgment in the treatment and care of his patient.

Malpractice, willful neglect, and unprofessional conduct are words and phrases which describe acts and conduct with such definiteness and clarity that charges brought under the Statute do no violence to Respondent's constitutional rights of due process and equal protection of the laws.

Respondent also contends that his treatment of school children under a program of the local school board which was funded by a grant from an agency of the Federal Government brought his acts and conduct in connection therewith within the exemption set forth in G.S. Section 90-29(3). That statutory section exempts from the provisions of Chapter 90, Article 2, "The practice of dentistry in the discharge of their official duties by dentists in the United States Army, the United States Navy, the United States Public Health Service, the United States Veterans Bureau, or other federal agency".

Respondent does not contend that he treated the school children named in this cause in the discharge of any official duty he had as a dentist in the Army, Navy, Public Health Service, or Veterans Bureau. By his exception, however, he contends that he was practicing dentistry upon said children while in the discharge of official duties as a dentist in some "other federal agency".

The record contains no evidence upon which to found such a contention. The evidence tends to show that, at the times in question, Respondent was engaged in the private practice of dentistry; that his patients qualified for treatment in the program by virtue of economic background; that the patients had the choice of selecting the dentist by whom they desired to be treated; that the

contractual terms and conditions for the treatment of said children were laid down by agents or officials of the Charlotte-Mecklenburg School Administration; and that the Respondent was compensated by said School Administration, for said services with funds granted to the Administration by a federal agency. There was no contractual relationship between Respondent and any federal agency. The Board was not, therefore, deprived of jurisdiction of this cause by virtue of any of the terms or reservations set forth in G.S. Section 90-29(3).

Upon a review and consideration of the entire record herein, the court finds that each Finding of Fact and Conclusion of Law made and entered by the Board relative to the seven (7) patients of Respondent named in his Exception No. 2 are supported by competent, material and substantial evidence heard and considered by the Board. The court, having considered and weighed the evidence heard by the Board, finds that Respondent has been guilty of those various acts of malpractice, willful neglect, and unprofessional conduct in the practice of dentistry in connection with his treatment of the following named patients, as set forth in the Decision of the Board, *viz*: Pricilla Moore, Gaspie Burton, Audrey Howard, Ervin Fulton, Stana Williams, Linda Reid, and Howard Avery.

Prior to the hearing conducted by the Board in this cause, Respondent filed a Motion seeking a hearing on the charges preferred against him by the Board before "an impartial Board, tribunal or committee", contending that the Board could not afford him a fair and impartial hearing on the aforesaid charges because said Board was, in effect, selected and dominated by the North Carolina Dental Society and that the North Carolina Dental Society was racially biased against Respondent—a Negro—and members of his race.

The Motion was denied by the Board prior to the hearing; the same Motion was renewed at the hearing and was again denied. The Board found and held that it was a lawfully organized agency of the State of North Carolina and that it alone was authorized, by law, to conduct a hearing and make lawful findings upon the charges pending against the Respondent. Respondent excepts to the denial of his Motion.

The Board is vested with administrative and quasi-judicial responsibility. It has the authority to conduct investigations, prefer charges, hold hearings on those charges, and, in appropriate instances, take punitive action against those practicing dentistry in this state. (N.C. G.S. Sections 90-27, 90-29, 90-40, 90-41, 150-10, 150-11, 150-16).

> Since a license is not a contract and gives the holder no right to continue in the practice in the future unrestricted, it follows that any license may be revoked for good cause, and that such revocation alone is not a taking of property without due process of law. It has been held that the power of a state to require a license implies power to revoke one which has been improperly issued. With respect to the great majority of questions pertaining to the matter of revocation, there is no possible distinction between refusing to grant a license and revoking one already granted. Both acts are an exercise of the police power. The power exercised and the object of its exercise are in each case identical, namely, to exclude an incompetent or unworthy person from the practice. . . .
>
> A majority of the cases passing on the question have held that statutes providing for the revocation of licenses of physicians, surgeons, or dentists are valid.

> As has been seen, there is, in most respects, no real distinction between refusing to grant a license and the revocation of one which has been granted, and it is within the police power of the state to delegate to the same body or tribunal which it has empowered to grant licenses the power to revoke them and to vest such tribunal with the power to investigate and try charges for the revocation of a license. Such a delegation is consistent with the constitutional guaranty of due process of law. The power conferred upon a state board to revoke a. . . .license for cause is a discretionary and administrative, and not a judicial, function. . . .as an incident to the establishment of an administrative tribunal empowered to make a final determination of whether or not the license of a medical or dental practitioner shall be revoked for a stated statutory legal cause, the legislature may confer upon it power to determine legal questions necessarily arising in the course of revocation proceedings. (Am. Jur., *Physicians and Surgeons*, Sections 45, 46, 47 and authorities therein cited.)

Respondent is, however, entitled to be heard on his Motion and to introduce evidence, if any he has, in support of his contention. The hearing should be in the nature of a *voir dire*. In this case, it is preferable that the *voir dire* should be conducted by the court in accordance with the provisions of N.C. G.S. Sections 150-24 and 150-27.

Upon the facts found and conclusions of law arising therefrom, the Board entered the following Order:

The following statement is contained in Section 90-22 (a) of the General Statutes of North Carolina:

"The practice of dentistry in the State of North Carolina is hereby declared to affect the public

health, safety and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified persons be permitted to practice dentistry in the State of North Carolina."

The North Carolina State Board of Dental Examiners was created as an agency of this State for the purpose of regulating the practice of dentistry within the State and this Board is ever mindful of its grave responsibilities so lucidly indicated in the above quotation.

In the interest of the public of this State and of the dental profession, it is therefore ordered as follows:

The licence of Dr. John P. Stinson to practice dentistry in the State of North Carolina shall be suspended for thirty (30) days for each separate violation of the following terms and conditions hereby imposed:

(a) For a period of six (6) months from the date of service hereof, he shall, on alternate Fridays, beginning on the second Friday following the date of service of this Opinion and Order, forward to the Secretary of the North Carolina State Board of Dental Examiners pre-operative and post-operative charts and pre-operative and post-operative x-rays pertaining to all patients upon whom he has performed any restorative or surgical procedure whatsoever during the immediately preceding two-week period, which charts and x-rays will be duly returned to him.

Said charts and x-rays shall be forwarded by mail or otherwise delivered to the following address:

Dr. Clinton C. Diercks, Secretary
N.C. State Board of Dental Examiners
Morganton, North Carolina

(b) During a six-month period from the date of service hereof, the said Dr. Stinson shall permit any member of the Board or representative of the Board to reasonably examine or view his operative procedures in this office.

In the event of suspension or suspensions of said license as aforesaid, the running of the six-month probationary period shall, during the period or periods of suspension, be in abeyance, and the time thereof that was unexpired as of the date of the suspension of license shall resume running as of the date of reinstatement of said license; and all of the terms, conditions and provisions of the above stated sub-paragraphs (a) and (b) shall continue to be in full force and effect until absolute expiration of the probationary period herein set forth and defined.

Upon a proper finding that a licensee has been guilty of those acts of which the Board found Respondent guilty, N.C. G.S. Section 90-41 provides that the Board "may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed".

Unlike the courts of this state (see N.C. G.S. Section 15-197) the Board does not have the authority to suspend, upon conditions imposed, the penal provisions of its orders entered pursuant to N.C. G.S. Section 90-41.

The order entered in this cause, therefore, was in excess of the authority of the Board, was void, and must be set aside.

IT IS, THEREFORE, ORDERED AND ADJUDGED:

1. That the Findings of Fact and the Conclusions of Law based thereon relative to the Respondent's patients above named, to wit: Pricilla Moore, Gaspie Burton, Audrey Howard, Ervin Fulton, Stana Williams, Linda Reid, and Howard Avery, are affirmed;

2. That the Order of the Board suspending Respondent's license to practice dentistry, upon failure to comply with certain conditions therein imposed, is set aside;

3. That this cause is remanded to the Board for reconsideration and for the entry of an appropriate lawful order;

4. That said order shall, when entered by the Board, be served upon the Respondent as provided by law;

5. That, thereafter, the Respondent shall have the right to appeal to this court, in the manner provided by Chapter 150 of the North Carolina General Statutes, to the end that a judicial hearing may be conducted and a determination made regarding the legal efficacy of the hearing conducted by the Board as the same relates to the prior motion of the Respondent for a hearing before "an impartial Board, tribunal or committee";

6. That the effectiveness of any punitive order entered by the Board pursuant hereto shall be stayed pending the determination to be made upon any appeal therefrom as aforesaid;

7. That, in the event of such an appeal from any order of the Board, said Board shall certify the record herein to this Court in the manner and form required by law, and

this cause shall thereupon be peremptorily calendared for judicial determination of Respondent's aforesaid motion;

8. That, except as herein set forth or otherwise provided in this Judgment, the Respondent's exceptions are overruled and the Decision of the Board is affirmed.

This 20 day of March, 1971.

A. PILSTON GODWIN, JR.
Judge Presiding

EXCEPTION NO. 63

SUPERIOR COURT JUDGMENT (NASH) (Filed March 20, 1971

This cause is an appeal by Dr. George T. Nash (Respondent) from a decision made and entered by the North Carolina State Board of Dental Examiners (Board) on July 30, 1968. Respondent's Notice of Appeal and his Statement of Exceptions were filed in apt time. This cause was calendared for hearing and was heard and considered by the undersigned Presiding Judge at a Special Session of Mecklenburg County Superior Court on February 1, 1971, and succeeding days. The Respondent and his attorneys, Julius L. Chambers and Fred Hicks, of the Mecklenburg County Bar, and the Board's attorney, Thomas M. Starnes, of the Burke County Bar, were present during all judicial proceedings. Counsel for the respective parties were heard and their Briefs and citations of authority were received and considered by the Court.

By its aforesaid decision of July 30, 1968, the Board found that Respondent had been guilty of eleven (11) separate instances of willful neglect, two (2) separate instances of malpractice, and fourteen (14) separate instances of unprofessional conduct, together with one (1) instance of unlawful solicitation for professional business, and made and entered Conclusions of Law arising therefrom.

To the Board's Findings of Fact, Conclusions of Law, and Order, the Respondent noted ten (10) exceptions and prayed judgment of this court setting aside the Board's Order and dismissing the Board's charges against him.

By various of his exceptions, Respondent contends that the North Carolina General Assembly, in enacting Section 90-41 of the General Statutes of North Carolina, used words and phrases which are vague and indefinite and failed to establish clear and definite standards for determining the willful neglect, unprofessional conduct, malpractice, and other acts of conduct on the part of North Carolina dentists which constitute grounds for the imposition by the Board of allegedly quasi-criminal penalties, and that the action of the Board in this case, therefore, violated his constitutional rights of due process and equal protection of the law.

The acts of unprofessional conduct, professional willful neglect, and malpractice which are statutory grounds for suspension or revocation of a dentist's license to practice his profession have long been recognized and understood by the law and the dental profession. The words and phrases so used by the North Carolina General Assembly and complained of by the Respondent have

had well recognized legal significance and meaning, when applied to or used in connection with the professions of medicine and dentistry, to wit:

(a) UNPROFESSIONAL CONDUCT: That which, is by common understanding and general opinion, is considered to be immoral, dishonorable, or disreputable in the professional practice; conduct exhibiting intellectual or moral incompetency in the professional practice, or acts of a nature likely to jeopardize the interest of the public.

(b) WILLFUL NEGLECT: That degree of a lack of due care evidencing a deliberate purpose not to discharge some duty necessary for the health, safety or welfare of another, which duty the person owing it has assumed by contract, or which is imposed upon the person by operation of law.

(c) MALPRACTICE: Failure of a dentist, who undertakes to render professional services, either to (i) possess the degree of professional learning, skill, and ability which others similarly situated ordinarily possess, or (ii) to exercise reasonable care and diligence in the application of his knowledge and skill to his patient's case, or (iii) to use his best judgment in the treatment and care of his patient.

Malpractice, willful neglect, and unprofessional conduct are words and phrases which describe acts and conduct with such definiteness and clarity that charges brought under the statute do no violence to Respondent's constitutional rights of due process and equal protection of the laws.

Respondent also contends that his treatment of school children under a program of the local school board which was funded by a grant from an agency of the Federal

Government brought his acts and conduct in connection therewith within the exemption set forth in G.S. Section 90-29(3). That statutory section exempts from the provisions of Chapter 90, Article 2, "The practice of dentistry in the discharge of their official duties by dentists in the United States Army, the United States Navy, the United States Public Health Service, the United States Veterans Bureau, or other federal agency".

Respondent does not contend that he treated the school children named in this cause in the discharge of any official duty he had as a dentist in the Army, Navy, Public Health Service, or Veterans Bureau. By his exception, however, he contends that he was practicing dentistry upon said children while in the discharge of official duties as a dentist in some "other federal agency".

The record contains no evidence upon which to found such a contention. The evidence tends to show that, at the times in question, Respondent was engaged in the private practice of dentistry; that his patients qualified for treatment in the program by virtue of economic background; that the patients had the choice of selecting the dentist by whom they desired to be treated; that the contractual terms and conditions for the treatment of said children were laid down by agents or officials of the Charlotte-Mecklenburg School Administration; and that the Respondent was compensated by said School Administration, for said services with funds granted to the Administration by a federal agency. There was no contractual relationship between Respondent and any federal agency. The Board was not, therefore, deprived of jurisdiction of this cause by virtue of any of the terms or reservations set forth in G.S. Section 90-29(3).

Upon a review and consideration of the entire record herein, the court finds that each Finding of Fact and Conclusion of Law made and entered by the Board relative to the eighteen (18) patients of Respondent named in his Exception No. 2 are supported by competent, material and substantial evidence heard and considered by the Board, with the exception of those matters pertaining to the Patient, Treva Watts. The Findings of Fact and Conclusions of Law are unrelated to the cause set forth in the Notice of Hearing served upon the Respondent and the same are hereby set aside. The Court, having considered and weighed the evidence heard by the Board, finds that Respondent has been guilty of those various acts of malpractice, willful neglect, and unprofessional conduct in the practice of dentistry in connection with his treatment of the following named patients, as set forth in the Decision of the Board, *viz:* Edward White, McDonald (Mack) Caldwell, Ray McInnis, Rufus Clindon, Linda Brawler, Jerome Howie, Arnita Caldwell, Doris Fletcher, Clifton McClain, Tony Thompson, James Morrison, Brenda McKnight, Michael Bailey, L'Tanya Bynum, Theron Barrino and Arthur Cherry.

Prior to the hearing conducted by the Board in this cause, Respondent filed a Motion seeking a hearing on the charges preferred against him by the Board before "an impartial Board, tribunal or committee", contending that the Board could not afford him a fair and impartial hearing on the aforesaid charges because said Board was, in effect, selected and dominated by the North Carolina Dental Society and that the North Carolina Dental Society was racially biased against Respondent—a Negro—and members of his race.

The Motion was denied by the Board prior to the hearing; the same Motion was renewed at the hearing and

was again denied. The Board found and held that it was a lawfully organized agency of the State of North Carolina and that it alone was authorized, by law, to conduct a hearing and make lawful findings upon the charges pending against the Respondent. Respondent excepts to the denial of his Motion.

The Board is vested with administrative and quasi-judicial responsibility. It has the authority to conduct investigations, prefer charges, hold hearings on those charges, and, in appropriate instances, take punitive action against those practicing dentistry in this state. (N.C. G.S. Sections 90-27, 90-29, 90-40, 90-41, 150-10, 150-11, 150-16).

> Since a license is not a contract and gives the holder no right to continue in the practice in the future unrestricted, it follows that any license may be revoked for good cause, and that such revocation alone is not a taking of property without due process of law. It has been held that the power of a state to require a license implies power to revoke one which has been improperly issued. With respect to the great majority of questions pertaining to the matter of revocation, there is no possible distinction between refusing to grant a license and revoking one already granted. Both acts are an exercise of the police power. The power exercised and the object of its exercise are in each case identical, namely, to exclude an incompetent or unworthly person from the practice . . . .

> A majority of the cases passing on the question have held that statutes providing for the revocation of licenses of physicians, surgeons, or dentists are valid.

As has been seen, there is, in most respects no real distinction between refusing to grant a license and the revocation of one which been granted, and it is within the police power of the state to delegate to the same body or tribunal which it has empowered to grant licenses the power to revoke them and to vest such tribunal with the power to investigate and try charges for the revocation of a license. Such a delegation is consistent with the constitutional guaranty of due process of law. The power conferred upon a state board to revoke a. . . .license for cause is a discretionary and administrative, and not a judicial, function. . . .as an incident to the establishment of an administrative tribunal empowered to make a final determination of whether or not the license of a medical or dental practitioner shall be revoked for a stated statutory legal cause, the legislature may confer upon it power to determine legal questions necessarily arising in the course of revocation proceedings. (Am. Jur., *Physicians and Surgeons*, Sections 45, 46, 47 and authorities therein cited.)

Respondent is, however, entitled to be heard on his Motion and to introduce evidence, if any he has, in support of his contention. The hearing should be in the nature of a *voir dire*. In this case, it is preferable that the *voir dire* should be conducted by the court in accordance with the provisions of N.C. G.S. Sections 150-24 and 150-27.

Upon the facts found and conclusions of law arising therefrom, the Board entered the following Order:

This Board is of the very definite opinion that the foregoing Findings of Fact and Conclusions of Law are more than sufficient to justify the suspension of

the Respondent's license to practice dentistry. We are, however, more concerned with the strengthening of the Respondent's professional competency and abilities and with the ultimate protection of the health and welfare of the public from which he draws his professional practice than with penalizing the Respondent.

It is, therefore, ordered that the license of Dr. George T. Nash to practice dentistry in the State of North Carolina is hereby suspended, effective twenty (20) days after service of this Opinion and Order upon him, and shall be and remain suspended unless he has or until he shall become enrolled in and attending a school of dentistry having accreditation requirements recognized by the American Dental Association Council on Dental Education and shall be engaged in a course of clinical operative restorative dentistry in which he will operate on a clinical floor under the supervision, direction and instruction of the regularly designated instructor in the operative and restorative department of said school for a prescribed course of not less than 100 chronological clinical hours; or, as an alternative, Dr. Nash may enroll and attend such dental school in a concentrated continuing education program within the limits of said school and approved by the North Carolina State Board of Dental Examiners.

In the event the said Dr. Nash meets the requirements of enrollment and commencement of class attendance hereinabove directed prior to the expiration of twenty (20) days from the date of service of this Order, the initial suspension of license hereinabove ordered will be ineffective so long as he further complies with the terms, provisions and conditions hereinafter set forth.

In the event the initial suspension of license hereinabove ordered does become effective, the said Dr. Nash's license shall immediately be reinstated upon receipt of due certification from the Administrator or Dean of the School of Dentistry at which he is in attendance that the said Dr. Nash has actively commenced one of the courses of study hereinabove required, subject, however, to the following terms and conditions:

(a) He must continually engage in the pursuit of the above prescribed course of study, without voluntary interruption of the same during the regular hours of said course, until such time as the Administrator of the School of Dentistry attended by him certifies to this Board that said Dr. Nash has satisfactorily concluded said course of study;

(b) During the period of time that he is engaged in the aforesaid course of study, said Dr. Nash may engage in the practice of dentistry in the State of North Carolina, provided, however, that he shall, during said time, at the request of the Board, make available to the Board his pre-operative and post-operative charts and his pre-operative and post-operative x-rays pertaining to any and all patients upon whom he may perform any operative restorative and/or surgical procedure during said period of time; this condition shall exist and shall remain in force and effect for a period of twelve (12) months from the date said Dr. Nash commences the course of study above specified or until he completes said course of study, whichever shall be the longer period.

In the event the said Dr. George T. Nash violates the terms and provisions of subparagraph (a) above, his license shall be suspended immediately and shall

remain suspended until such time as he resumes compliance with the terms and conditions of said subparagraph (a);

In the event the said Dr. George T. Nash violates any of the terms and conditions of subparagraph (b) above, his license shall forthwith be suspended for thirty (30) days for each separate violation thereof.

In no event shall the initial suspension of license hereinabove ordered lapse into abeyance until such time as said Dr. George T. Nash is duly enrolled in and actively engaged in the aforesaid course of study and such fact is duly certified to this Board by notice forwarded to the following address:

Dr. Clinton C. Diercks, Secretary
N.C. State Board of Dental Examiners
Morganton, North Carolina

Upon a proper finding that a licensee has been guilty of those acts of which the Board found Respondent guilty, N.C. G.S. Section 90-41 provides that the Board "may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed".

Unlike the courts of this state (see N.C. G.S. Section 15-197) the Board does not have the authority to suspend, upon conditions imposed, the penal provisions of its orders entered pursuant to N.C. G.S. Section 90-41.

The order entered in this cause, therefore, was in excess of the authority of the Board, was void, and must be set aside.

IT IS, THEREFORE ORDERED AND ADJUDGED:

1. That the Findings of Fact and Conclusions of Law based thereon relative to the Respondent's patients above named, to wit: Edward White, McDonald (Mack) Caldwell, Ray McInnis, Rufus Clindon, Linda Brawler, Jerome Howie, Arnita Caldwell, Doris Fletcher, Clifton McClain, Tony Thompson, James Morrison, Brenda McKnight, Michael Bailey, L'Tanya Bynum, Theron Barrino and Arthur Cherry, are affirmed.

2. That the Order of the Board suspending Respondent's license to practice dentistry, upon failure to comply with certain conditions therein imposed, is set aside;

3. That this cause is remanded to the Board for reconsideration and for the entry of an appropriate lawful order;

4. That said order shall, when entered by the Board, be served upon the Respondent as provided by law;

5. That, thereafter, the Respondent shall have the right to appeal to this court, in the manner provided by Chapter 150 of the North Carolina General Statutes, to the end that a judicial hearing may be conducted and a determination made regarding the legal efficacy of the hearing conducted by the Board as the same relates to the prior motion of the Respondent for a hearing before "an impartial Board, tribunal or committee";

6. That the effectiveness of any punitive order entered by the Board pursuant hereto shall be stayed pending the determination to be made upon any appeal therefrom as aforesaid;

7. That, in the event of such an appeal from any order of the Board, said Board shall certify the record herein to this Court in the manner and form required by law, and this cause shall thereupon be peremptorily calendared for judicial determination of Respondent's aforesaid motion;

8. That, except as herein set forth or otherwise provided in this Judgment, the Respondent's exceptions are overruled and the Decision of the Board is affirmed.

This 20 day of March, 1971.

A. PILSTON GODWIN, JR.
Judge Presiding

EXCEPTION NO. 64

SERVICE OF NOTICE OF ORDER OF NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS (HAWKINS)

STATE OF NORTH CAROLINA

To the Sheriff of Mecklenburg County, North Carolina-GREETING:

YOU ARE HEREBY COMMANDED TO SERVE THE ATTACHED ORDER OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS UPON THE FOLLOWING NAMED, THE MANNER OF YOUR

SERVICE TO BE DELIVERY OF A COPY OF AFORESAID ORDER, PERSONALLY, TO:

Dr. Reginald A. Hawkins
1218 Beatties Ford Road
Charlotte, North Carolina
- or -
1703 Madison Avenue
Charlotte, North Carolina

Issued this 20th day of May, 1971, by the North Carolina State Board of Dental Examiners.

FREEMAN C. SLAUGHTER, D.D.S.
Secretary
North Carolina State Board of
Dental Examiners

SHERIFF'S RETURN

Received: This 26 day of May, 1971.

Served: This 26 day of May, 1971, by delivering a copy of this Service of Order of North Carolina State Board of Dental Examiners and of said Order personally to Dr. Reginald A. Hawkins in Mecklenburg County, North Carolina.

DONALD W. STAHL
Sheriff of Mecklenburg County, N.C.
By: Emanuel H. Ross
Deputy Sheriff

ORDER SUSPENDING LICENSE OF HAWKINS

Pursuant to Judgment of the Mecklenburg County Superior Court entered by Honorable A. Pilston Godwin, Jr., under date of March 20, 1971, the above entitled cause has been reconsidered by the North Carolina State Board of Dental Examiners, and, upon the Findings of Fact and Conclusions of Law heretofore entered by the said North Carolina State Board of Dental Examiners and affirmed by the Mecklenburg County Superior Court,

It is ordered that the license of Dr. Reginald A. Hawkins to practice dentistry in the State of North Carolina shall be, and the same hereby is, suspended for a period of twelve (12) months.

This 20th day of May, 1971.

N.C. STATE BOARD OF DENTAL EXAMINERS

By: THOMAS G. COLLINS, D.D.S.
President

ATTEST:
BY: Freeman C. Slaughter, D.D.S.
Secretary-Treasurer

EXCEPTION NO. 65

NOTICE (HAWKINS)

TO: DR. REGINALD A. HAWKINS

You are hereby advised that, in accordance with the prior Judgment of the Mecklenburg County Superior Court, you have the right to appeal the above Order to the Mecklenburg County Superior Court to the end that a judicial hearing may be conducted and a determination made regarding the legal efficacy of the original hearing conducted by the Board, as the same relates to your prior Motion for a hearing before an impartial tribunal. To perfect said appeal, you must, WITHIN TWENTY (20) DAYS AFTER DATE OF SERVICE OF THIS ORDER, file a written notice of appeal with the secretary of the North Carolina State Board of Dental Examiners at the following address:

Dr. Freeman C. Slaughter
Secretary
201-05 Professional Bldg.
N.C. State Board of Dental Examiners
Kannapolis, N. C. 28801

Failure to file said notice of appeal in the manner and within the time hereinabove stated shall operate as a waiver of your right of appeal, with the result that the above stated Order of the N. C. State Board of Dental Examiners shall become final.

This 20th day of May, 1971.

N.C. STATE BOARD OF DENTAL EXAMINERS

BY: FREEMAN C. SLAUGHTER, D.D.S.
Secretary

SERVICE OF NOTICE OF ORDER OF NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS (STINSON)

STATE OF NORTH CAROLINA:

To the Sheriff of Mecklenburg County, North Carolina-GREETING:

YOU ARE HEREBY COMMANDED TO SERVE THE ATTACHED ORDER OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS UPON THE FOLLOWING NAMED, THE MANNER OF YOUR SERVICE TO BE DELIVERY OF A COPY OF AFORESAID ORDER, PERSONALLY, TO:

Dr. John P. Stinson
1021-A Beatties Ford Road
Charlotte, North Carolina
-or-
3121 Valleywood Place
Charlotte, North Carolina

Issued this 20th day of May, 1971, by the North Carolina State Board of Dental Examiners.

FREEMAN C. SLAUGHTER, D.D.S.
Secretary
North Carolina State Board of
Dental Examiners

SHERIFF'S RETURN

Received: This 26 day of May, 1971.

Served: This 26 day of May, 1971, by delivering a copy of this Service of Order of North Carolina State Board of Dental Examiners and of said Order personally to Dr. John P. Stinson in Mecklenburg County, North Carolina.

DONALD W. STAHL
Sheriff of Mecklenburg County, N.C.
By: Emanuel H. Ross
Deputy Sheriff

ORDER SUSPENDING LICENSE (STINSON)

Pursuant to Judgment of the Mecklenburg County Superior Court entered by Honorable A. Pilston Godwin, Jr., under date of March 20, 1971, the above entitled cause has been reconsidered by the North Carolina State Board of Dental Examiners, and, upon the Findings of Fact and Conclusions of Law heretofore entered by the said North Carolina State Board of Dental Examiners and affirmed by the Mecklenburg County Superior Court,

It is ordered that the license of Dr. John P. Stinson to practice dentistry in the State of North Carolina shall be, and the same hereby is, suspended for a period of sixty (60) days.

This 20th day of May, 1971.

N.C. STATE BOARD OF DENTAL EXAMINERS

BY: THOMAS G. COLLINS, D.D.S.
President

ATTEST:
Freeman C. Slaughter, D.D.S.
Secretary-Treasurer

EXCEPTION NO. 66

NOTICE (STINSON)

TO: DR. JOHN P. STINSON

You are hereby advised that, in accordance with the prior Judgment of the Mecklenburg County Superior Court, you have the right to appeal the above Order to the Mecklenburg County Superior Court to the end that a judicial hearing may be conducted and a determination made regarding the legal efficacy of the original hearing conducted by the Board, as the same relates to your prior Motion for a hearing before an impartial tribunal. To perfect said appeal, you must, WITHIN TWENTY (20) DAYS AFTER DATE OF SERVICE OF THIS ORDER, file a written notice of appeal with the secretary of the North Carolina State Board of Dental Examiners at the following address:

Dr. Freeman C. Slaughter
Secretary
201-05 Professional Bldg.
N.C. State Board of Dental Examiners
Kannapolis, N. C. 28801

Failure to file said notice of appeal in the manner and within the time hereinabove stated shall operate as a waiver of your right of appeal, with the result that the

above stated Order of the N.C. State Board of Dental Examiners shall become final.

This 20th day of May, 1971.

N.C. STATE BOARD OF DENTAL EXAMINERS

BY: FREEMAN C. SLAUGHTER, D.D.S.
Secretary

SERVICE OF NOTICE OF ORDER OF NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS (NASH)

STATE OF NORTH CAROLINA:

To the Sheriff of Mecklenburg County, North Carolina-GREETING:

YOU ARE HEREBY COMMANDED TO SERVE THE ATTACHED ORDER OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS UPON THE FOLLOWING NAMED, THE MANNER OF YOUR SERVICE TO BE DELIVERY OF A COPY OF AFORESAID ORDER, PERSONALLY, TO:

Dr. George T. Nash
2506 Beatties Ford Road
Charlotte, North Carolina

Issued this 20th day of May, 1971, by the North Carolina State Board of Dental Examiners.

FREEMAN C. SLAUGHTER, D.D.S.
Secretary
North Carolina State Board of
Dental Examiners

SHERIFF'S RETURN

Received: This 26 day of May, 1971.

Served: This 28 day of May, 1971, by delivering a copy of this Service of Order of North Carolina State Board of Dental Examiners and of said Order personally to Dr. George T. Nash in Mecklenburg County, North Carolina.

DONALD W. STAHL
Sheriff of Mecklenburg County, N.C.
By: Emanuel H. Ross
Deputy Sheriff

ORDER SUSPENDING LICENSE(NASH)

Pursuant to Judgment of the Mecklenburg County Superior Court entered by Honorable A. Pilston Godwin, Jr., under date of March 20, 1971, the above entitled cause has been reconsidered by the North Carolina State Board of Dental Examiners, and, upon the Findings of Fact and Conclusions of Law heretofore entered by the said North Carolina State Board of Dental Examiners and affirmed by the Mecklenburg County Superior Court,

It is ordered that the license of Dr. George T. Nash to practice dentistry in the State of North Carolina shall be, and the same hereby is, suspended for a period of eighteen (18) months.

This 20th day of May, 1971.

N.C. STATE BOARD OF DENTAL EXAMINERS

BY: THOMAS G. COLLINS, D.D.S.
President

ATTEST:
Freeman C. Slaughter, D.D.S.
Secretary-Treasurer

EXCEPTION NO. 67

NOTICE (NASH)

TO: DR. GEORGE T. NASH

You are hereby advised that, in accordance with the prior Judgment of the Mecklenburg County Superior Court, you have the right to appeal the above Order to the Mecklenburg County Superior Court to the end that a judicial hearing may be conducted and a determination made regarding the legal efficacy of the original hearing conducted by the Board, as the same relates to your prior Motion for a hearing before an impartial tribunal. To perfect said appeal, you must, WITHIN TWENTY (20) DAYS AFTER DATE OF SERVICE OF THIS ORDER, file a written notice of appeal with the secretary of the

North Carolina State Board of Dental Examiners at the following address:

Dr. Freeman C. Slaughter
Secretary
201-05 Professional Bldg.
N. C. State Board of Dental Examiners
Kannapolis, N. C. 28801

Failure to file said notice of appeal in the manner and within the time hereinabove stated shall operate as a waiver of your right of appeal, with the result that the above stated Order of the N.C. State Board of Dental Examiners shall become final.

This 20th day of May, 1971.

N.C. STATE BOARD OF DENTAL EXAMINERS

BY: FREEMAN C. SLAUGHTER, D.D.S.
Secretary

NOTICE OF APPEAL AND STATEMENT OF EXCEPTIONS TO OPINION AND ORDER OF THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS (HAWKINS)
(Filed June 9, 1971)

ORDER OF SUPERIOR COURT AS TO HAWKINS
(Filed Sept. 2, 1971)

The above entitled cause came on for hearing before the undersigned Judge Presiding at the August 30, 1971

Non-Jury Civil Session, Mecklenburg County Superior Court, upon appeal of the respondent from an order of the North Carolina State Board of Dental Examiners, entered May 20, 1971, and for a voir dire hearing directed by Honorable A. Pilston Godwin, Jr.;

And it appearing to the court that the original appeal of the respondent from the original order entered by the North Carolina State Board of Dental Examiners was heretofore heard in Mecklenburg County Superior Court before the Honorable A. Pilston Godwin, Jr.;

And it further appearing to the court that, upon the aforesaid original appeal, various findings of fact and conclusions of law theretofore entered by the North Carolina State Board of Dental Examiners were affirmed and this proceeding remanded to said board for reconsideration and for the entry of an appropriate lawful order;

And it further appearing to the court that the aforesaid judgment entered by the Honorable A. Pilston Godwin, Jr. provided for a further judicial hearing following entry of order by said board upon remand, to the end that a hearing be conducted and a determination made regarding the legal efficacy of the hearing, conducted by the board as the same relates to the prior motion of the respondent for a hearing before "impartial board, tribunal or committee;"

And it further appearing to the court, from the record herein and as a matter of fact, that the North Carolina State Board of Dental Examiners, in reconsideration of entry of order upon remand failed to provide the respondent an opportunity to appear, either personally or

by counsel, before said board for the presentation of argument pertaining to possible penalty or penalties to be imposed by the board, and that said board entered an order on May 20, 1971, suspending the license of the respondent to practice dentistry in the State of North Carolina for a period of twelve (12) months;

And the court having conducted a voir dire hearing as hereinbefore directed by the judgment of the Superior Court and having heard all evidence to be presented by the parties relative thereto;

And the court being of the opinion that the respondent was entitled to an appearance before the board, either personally or by counsel, to be heard upon the matter of penalty or penalties to be imposed by the board upon remand of said matter to the board for entry of an order;

NOW, THEREFORE, IT IS ORDERED:

1. That the court shall retain jurisdiction of the above entitled cause for a period of thirty (30) days for determination of the issue raised by the respondent as to the impartiality of the North Carolina State Board of Dental Examiners and the conduct of the original hearing before the board;

2. That this proceeding is remanded to the board to the sole end that the board shall give the respondent an opportunity to appear before said board, personally or by counsel, for the restricted purpose of presentation of argument upon the matter of penalty or penalties to be imposed upon respondent by said board; and that no conclusive order shall be entered by said board herein until respondent is afforded the above said opportunity;

3. That the board shall conduct aforesaid proceeding and make entry of its order, if any, herein within thirty (30) days from the date of this order and such order as shall be entered by the board shall be transmitted to the Clerk of the Superior Court of Mecklenburg County under the seal of the Secretary of the North Carolina State Board of Dental Examiners and made a part of the record herein; and, provided further, that upon transmission of such order to the court, a copy thereof shall be provided to respondent and his counsel of record;

4. That the exception of the respondent to the order entered by the board on May 20, 1971, alleging that the penalty stated in said order violates the rights of the respondent by exceeding the severity of the penalty imposed by the original order of the board shall be determined by this court following entry of an order by the board under the terms and conditions of this order;

5. That the matter shall be peremptorily scheduled for further proceedings hereunder before this court immediately following receipt of the order of the North Carolina State Board of Dental Examiners hereinabove directed to be filed with the Clerk of Mecklenburg County Superior Court; that by and with the consent of counsel for the parties hereto such further proceedings may be conducted out of Session and out of District.

This 2 day of Sept., 1971.

s/ JOHN R. FRIDAY
Honorable John R. Friday
Judge Presiding

We consent to the conduct of further proceedings herein before the Honorable John R. Friday out of Session and out of this District.

CHAMBERS, STEIN, FERGUSON & LANNING
237 West Trade Street
Charlotte, North Carolina
By: J. LeVONNE CHAMBERS
Counsel for Respondent
PATTON, STARNES AND THOMPSON
Morganton, North Carolina
By: THOMAS M. STARNES

Counsel for North Carolina State
Board of Dental Examiners

ORDER OF SUPERIOR COURT AS TO STINSON
(Filed Sept. 2, 1971)

The above entitled cause came on for hearing before the undersigned Judge Presiding at the August 30, 1971 Non-Jury Civil Session, Mecklenburg County Superior Court, upon appeal of the respondent from an order of the North Carolina State Board of Dental Examiners, entered May 20, 1971, and for a voir dire hearing directed by Honorable A. Pilston Godwin, Jr.;

And it appearing to the court that the original appeal of the respondent from the original order entered by the North Carolina State Board of Dental Examiners was heretofore heard in Mecklenburg County Superior Court before the Honorable A. Pilston Godwin, Jr.;

And it further appearing to the court that, upon the aforesaid original appeal, various findings of fact and

conclusions of law theretofore entered by the North Carolina State Board of Dental Examiners were affirmed and this proceeding remanded to said board for reconsideration and for the entry of an appropriate lawful order;

And it further appearing to the court that the aforesaid judgment entered by the Honorable A. Pilston Godwin, Jr. provided for a further judicial hearing following entry of order by said Board upon remand, to the end that a hearing be conducted and a determination made regarding the legal efficacy of the hearing, conducted by the board as the same relates to the prior motion of the respondent for a hearing before "impartial board, tribunal or committee;"

And it further appearing to the court, from the record herein and as a matter of fact, that the North Carolina State Board of Dental Examiners, in reconsideration of entry of order upon remand failed to provide the respondent an opportunity to appear, either personally or by counsel, before said board for the presentation of argument pertaining to possible penalty or penalties to be imposed by the board, and that said board entered an order on May 20, 1971, suspending the license of the respondent to practice dentistry in the State of North Carolina for a period of sixty (60) days;

And the court having conducted a voir dire hearing as hereinbefore directed by the judgment of the Superior Court and having heard all evidence to be presented by the parties relative thereto;

And the court being of the opinion that the respondent was entitled to an appearance before the board, either personally or by counsel, to be heard upon the matter of

penalty or penalties to be imposed by the board upon remand of said matter to the board for entry of an order;

NOW, THEREFORE, IT IS ORDERED:

1. That the court shall retain jurisdiction of the above entitled cause for a period of thirty (30) days for determination of the issue raised by the respondent as to the impartiality of the North Carolina State Board of Dental Examiners and the conduct of the original hearing before the board;

2. That this proceeding is remanded to the board to the sole end that the board shall give the respondent an opportunity to appear before said board, personally or by counsel, for the restricted purpose of presentation of argument upon the matter of penalty or penalties to be imposed upon respondent by said board; and that no conclusive order shall be entered by said board herein until respondent is afforded the above said opportunity;

3. That the board shall conduct aforesaid proceeding and make entry of its order, if any, herein within thirty (30) days from the date of this order and such order as shall be entered by the board shall be transmitted to the Clerk of the Superior Court of Mecklenburg County under the seal of the Secretary of the North Carolina State Board of Dental Examiners and made a part of the record herein; and, provided further, that upon transmission of such order to the court, a copy thereof shall be provided to respondent and his counsel of record;

4. That the exception of the respondent to the order entered by the board on May 20, 1971, alleging that the penalty stated in said order violates the rights of the

respondent by exceeding the severity of the penalty imposed by the original order of the board shall be determined by this court following entry of an order by the board under the terms and conditions of this order;

5. That the matter shall be peremptorily scheduled for further proceedings hereunder before this court immediately following receipt of the order of the North Carolina State Board of Dental Examiners hereinabove directed to be filed with the Clerk of Mecklenburg County Superior Court that by and with the consent of counsel for the parties hereto such further proceedings may be conducted out of Session and out of District.

This 2 day of Sept., 1971.

s/ JOHN R. FRIDAY
Honorable John R. Friday
Judge Presiding

We consent to the conduct of further proceedings herein before the Honorable John R. Friday out of Session and out of this District.

CHAMBERS, STEIN, FERGUSON & LANNING
237 West Trade Street
Charlotte, North Carolina
By: J. LeVONNE CHAMBERS
Counsel for Respondent

PATTON, STARNES AND THOMPSON
Morganton, North Carolina
By: T. M. Starnes
Counsel for North Carolina State
Board of Dental Examiners

ORDER OF SUPERIOR COURT AS TO NASH (Filed Sept. 2, 1971)

The above entitled cause came on for hearing before the undersigned Judge Presiding at the August 30, 1971 Non-Jury Civil Session, Mecklenburg County Superior Court, upon appeal of the respondent from an order of the North Carolina State Board of Dental Examiners, entered May 20, 1971, and for a voir dire hearing directed by Honorable A. Pilston Godwin, Jr.;

And it appearing to the court that the original appeal of the respondent from the original order entered by the North Carolina State Board of Dental Examiners was heretofore heard in Mecklenburg County Superior Court before the Honorable A. Pilston Godwin, Jr.;

And it further appearing to the court that, upon the aforesaid original appeal, various findings of fact and conclusions of law theretofore entered by the North Carolina State Board of Dental Examiners were affirmed and this proceeding remanded to said board for reconsideration and for the entry of an appropriate lawful order;

And it further appearing to the court that the aforesaid judgment entered by the Honorable A. Pilston Godwin, Jr. provided for a further judicial hearing following entry of order by said board upon remand, to the end that a hearing be conducted and a determination made regarding the legal efficacy of the hearing, conducted by the board as the same relates to the prior motion of the respondent for a hearing before an "impartial board, tribunal or committee;"

And it further appearing to the court, from the record herein and as a matter of fact, that the North Carolina

State Board of Dental Examiners, in reconsideration of entry of order upon remand failed to provide the respondent an opportunity to appear, either personally or by counsel, before said board for the presentation of argument pertaining to possible penalty or penalties to be imposed by the board, and that said board entered an order on May 20, 1971, suspending the license of the respondent to practice dentistry in the State of North Carolina for a period of eighteen (18) months.

And the court having conducted a voir dire hearing as hereinbefore directed by the judgment of the Superior Court and having heard all evidence to be presented by the parties relative thereto;

And the court being of the opinion that the respondent was entitled to an appearance before the board, either personally or by counsel, to be heard upon the matter of penalty or penalties to be imposed by the board upon remand of said matter to the board for entry of an order;

NOW, THEREFORE, IT IS ORDERED:

1. That the court shall retain jurisdiction of the above entitled cause for a period of thirty (30) days for determination of the issue raised by the respondent as to the impartiality of the North Carolina State Board of Dental Examiners and the conduct of the original hearing before the board;

2. That this proceeding is remanded to the board to the sole end that the board shall give the respondent an opportunity to appear before said board, personally or by counsel, for the restricted purpose of presentation of argument upon the matter of penalty or penalties to be imposed upon respondent by said board; and that no

conclusive order shall be entered by said board herein until respondent is afforded the above said opportunity;

3. That the board shall conduct aforesaid proceeding and make entry of its order, if any, herein within thirty (30) days from the date of this order and such order as shall be entered by the board shall be transmitted to the Clerk of the Superior Court of Mecklenburg County under the seal of the Secretary of the North Carolina State Board of Dental Examiners and made a part of the record herein; and, provided further, that upon transmission of such order to the court, a copy thereof shall be provided to respondent and his counsel of record;

4. That the exception of the respondent to the order entered by the board on May 20, 1971, alleging that the penalty stated in said order violates the rights of the respondent by exceeding the severity of the penalty imposed by the original order of the board shall be determined by this court following entry of an order by the board under the terms and conditions of this order;

5. That the matter shall be peremptorily scheduled for further proceedings hereunder before this court immediately following receipt of the order of the North Carolina State Board of Dental Examiners hereinabove directed to be filed with the Clerk of Mecklenburg County Superior Court; that by and with the consent of counsel for the parties hereto such further proceedings may be conducted out of Session and out of District.

This 2 day of Sept., 1971.

s/ JOHN R. FRIDAY
Honorable John R. Friday
Judge Presiding

We consent to the conduct of further proceedings herein before the Honorable John R. Friday out of Session and out of this District.

CHAMBERS, STEIN, FERGUSON & LANNING
237 West Trade Street
Charlotte, North Carolina
By: J. LeVONNE CHAMBERS
Counsel for Respondent

PATTON, STARNES AND THOMPSON
Morganton, North Carolina
By: Thomas M. Starnes
Counsel for North Carolina State
Board of Dental Examiners

ORDER OF BOARD OF DENTAL EXAMINERS AS TO HAWKINS (Filed Sept. 30, 1971)

In accordance with the Order of the Mecklenburg County Superior Court entered by Honorable John R. Friday under date of September 2, 1971, the North Carolina State Board of Dental Examiners, after due notice given to the respondent and his counsel, convened in Charlotte, North Carolina, at 10 A.M. on September 18, 1971, for the purpose of giving the respondent an opportunity to appear before said Board, personally or by counsel, for presentation of argument upon the matter of any penalty or penalties to be finally imposed upon respondent by the Board;

Pursuant to the aforesaid notice, the respondent and his attorney, Mr. Julius L. Chambers, appeared before the North Carolina State Board of Dental Examiners at the time and place hereinabove stated, and said counsel for

the respondent presented arguments to the Board as aforesaid;

Upon full and complete consideration of the arguments of counsel for the respondent and the record herein, IT IS ORDERED that the license of Dr. Reginald A. Hawkins to practice dentistry in the State of North Carolina shall be, and the same hereby is, suspended for a period of twelve (12) months.

This 28th day of September, 1971.

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS
By: Dr. R. H. Watson
President

Attest:
s/ FREEMAN C. SLAUGHTER, D.D.S.
Secretary-Treasurer

EXCEPTION NO. 109

CERTIFICATION

I, Freeman C. Slaughter, D.D.S., do hereby certify that I am Secretary-Treasurer of the North Carolina State Board of Dental Examiners, and that the within Order constitutes the decision of said Board.

This 28th day of September, 1971.

s/ FREEMAN C. SLAUGHTER, D.D.S.
Secretary-Treasurer
N. C. State Board of Dental Examiners

ORDER OF BOARD OF DENTAL EXAMINERS AS TO STINSON (Filed Sept. 20 1971)

In accordance with the Order of the Mecklenburg County Superior Court entered by Honorable John R. Friday under date of September 2, 1971, the North Carolina State Board of Dental Examiners, after due notice given to the respondent and his counsel, convened in Charlotte, North Carolina, at 10 A.M. on September 18, 1971, for the purpose of giving the respondent an opportunity to appear before said Board, personally or by counsel, for presentation of argument upon the matter of any penalty or penalties to be finally imposed upon respondent by the Board;

Pursuant to the aforesaid notice, the respondent and his attorney, Mr. Julius L. Chambers, appeared before the North Carolina State Board of Dental Examiners at the time and place hereinabove stated, and said counsel for the respondent presented arguments to the Board as aforesaid;

Upon full and complete consideration of the arguments of counsel for the respondent and the record herein, IT IS ORDERED that the license of Dr. John P. Stinson to practice dentistry in the State of North Carolina shall be, and the same hereby is, suspended for a period of sixty (60) days.

This 28th day of September, 1971.

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS
By: Dr. R. H. Watson
President

Attest:
s/ FREEMAN C. SLAUGHTER, D.D.S.
Secretary-Treasurer EXCEPTION NO. 110

CERTIFICATION

I, Freeman C. Slaughter, D.D.S., do hereby certify that I am Secretary-Treasurer of the North Carolina State Board of Dental Examiners, and that the within Order constitutes the decision of said Board.

This 28th day of September, 1971.

s/ FREEMAN C. SLAUGHTER, D.D.S.
Secretary-Treasurer
N.C. State Board of Dental Examiners

ORDER OF BOARD OF DENTAL EXAMINERS AS TO NASH (Filed Sept. 30, 1971)

In accordance with the Order of the Mecklenburg County Superior Court entered by Honorable John R. Friday under date of September 2, 1971, the North Carolina State Board of Dental Examiners, after due notice given to the respondent and his counsel, convened in Charlotte, North Carolina, at 10 A.M. on September 18, 1971, for the purpose of giving the respondent an opportunity to appear before said Board, personally or by counsel, for presentation of argument upon the matter of any penalty or penalties to be finally imposed upon respondent by the Board;

Pursuant to the aforesaid Notice, the respondent and his attorney, Mr. Julius L. Chambers, appeared before the North Carolina State Board of Dental Examiners at the

time and place hereinabove stated, and said counsel for the respondent presented arguments to the Board as aforesaid;

Upon full and complete consideration of the arguments of counsel for the respondent and the record herein, IT IS ORDERED that the license of Dr. George T. Nash to practice dentistry in the State of North Carolina shall be, and the same hereby is suspended for a period of eighteen (18) months.

This 28th day of September, 1971.

NORTH CAROLINA STATE BOARD
OF DENTAL EXAMINERS
By: Dr. R. H. Watson
President

Attest:
s/ FREEMAN C. SLAUGHTER, D.D.S.
Secretary-Treasurer

EXCEPTION NO. 111

CERTIFICATION

I, Freeman C. Slaughter, D.D.S., do hereby certify that I am Secretary-Treasurer of the North Carolina State Board of Dental Examiners, and that the within Order constitutes the decision of said Board.

This 28th day of September, 1971.

s/ FREEMAN C. SLAUGHTER, D.D.S.
Secretary-Treasurer
N.C. State Board of Dental Examiners

ORDER OF SUPERIOR COURT 10/21/71 AS TO HAWKINS

The above entitled cause was originally heard before the North Carolina State Board of Dental Examiners (hereinafter referred to as "Board"), at the conclusion of which hearing said Board made and entered findings of fact, conclusions of law, and an Order providing that:

1. The license of Dr. Reginald A. Hawkins to practice dentistry in the State of North Carolina be suspended, effective twenty (20) days after service of the Order, and to remain suspended until such time as said Respondent was enrolled in a course of clinical dental study specified in the Order; and,

2. The Respondent could practice dentistry during his enrollment in said course of study; and, during that time, or for twelve months, whichever was longer, he was required to make certain records available to the Board upon request; and

3. The license of the Respondent was to be suspended if he voluntarily interrupted the pursuit of the above specified course of study, said license to remain suspended until such time as the course of study was resumed; and

4. The license of the Respondent was to be suspended for thirty (30) days for each separate violation of the above stated requirement that he make certain records available to the Board.

Respondent appealed to Mecklenburg County Superior Court and the matter was heard, on appeal, by Honorable Pilston Godwin, Jr., whereupon Judgment was entered:

a. Affirming various findings of fact and conclusions of law.

b. Determining that the conditional order of license suspension was in excess of the statutory authority given the Board and remanding the proceeding to the Board for entry of an appropriate lawful order; and

c. Requiring that a subsequent judicial hearing be conducted and a determination made regarding the legal efficacy of the original hearing conducted by the Board as the same related to the prior Motion of Respondent for a hearing before "an impartial Board, tribunal or committee."

Upon remand, the Board entered an Order suspending the license of Respondent to practice dentistry in the State of North Carolina for a period of twelve (12) months. From that Order, Respondent appealed to Mecklenburg County Superior Court and noted as exceptions:

a. The latter Order of the Board was violative of various rights of Respondent for the reason that the same constituted an increase in penalty or punishment over that imposed by the original Order; and

b. The rights of Respondent were violated for failure of the Board to afford him an opportunity to appear before said Board and be heard, during reconsideration upon remand, prior to entry of the above said latter Order of the Board.

This cause came before this Court at the August 30, 1971 Civil Session of Mecklenburg County Superior

Court upon the last noted appeal of Respondent and for the further purpose of conducting a judicial hearing upon the prior Motion of Respondent as directed by the above said Order entered by Honorable Pilston Godwin, Jr. After receiving the evidence of the Respondent relating to his prior Motion for a hearing before an impartial body and matters touching upon the fairness or lack thereof of the hearing conducted by the Board, this Court entered an Order providing that:

1. This matter be remanded to the Board to the end that the Board give the Respondent an opportunity to appear before said Board, personally or by counsel, for the restricted purpose of presentation of argument upon the matter of penalty or penalties to be imposed upon Respondent by said Board; and that no conclusive Order be entered by said Board until Respondent is afforded said opportunity;

2. The Court retained jurisdiction of this cause and reserved its ruling relative to:

a. The issue raised by the Respondent as to the impartiality of the Board and the conduct of the original hearing before the Board, and

b. The exception of the Respondent to the latter Order entered by the Board alleging that the penalty set forth in said Order violated the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board.

Subsequent to entry of the above said Order of this Court, and within the time therein allowed, the Board conducted a further proceeding wherein the Respondent

and his counsel appeared before the Board and presented arguments relative to penalty or penalties to be imposed upon Respondent. Following said proceeding, and within the time allowed by the above said Order of this Court, the North Carolina State Board of Dental Examiners entered an Order suspending the license of the Respondent to practice dentistry in the State of North Carolina for a period of twelve (12) months and duly certified said Order to the Clerk of Mecklenburg County Superior Court.

Following entry of the above said Order and certification thereof to the Clerk of Mecklenburg County Superior Court, the Respondent appealed from said Order and noted as exceptions that:

a. The penalty imposed by said Order exceeded the penalty imposed by the initial Order entered by the Board; and

b. The punishment or penalty imposed was not supported by any findings made by the Board and was without standards and thereby violative of the rights of the Respondent.

The exceptions above noted are identical in nature to points upon which this Court has heretofore reserved its ruling.

This cause came on for hearing in Mecklenburg County Superior Court on the 19 day of October 1971, upon the last noted appeal of the Respondent and for entry of an Order pertaining to those matters upon which rulings have heretofore been reserved, the issues thereby presented to the Court being as follows:

1. A determination of the issue raised by the Respondent as to the impartiality of the North Carolina State Board of Dental Examiners as it was constituted at the time of the original hearing and the impartiality of the conduct of said hearing before the Board; and

2. Decision as to the exception of the Respondent to the Order of the Board entered on May 20, 1971 alleging that the penalty set forth in said Order violated the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board; and

3. Decision as to the exceptions of the Respondent to the Order of the Board entered on September 28, 1971.

RULING OF THE COURT

Upon the evidence offered by the Respondent at the August 30, 1971 Civil Session of the Mecklenburg County Superior Court at which a hearing was conducted to the end that a judicial determination might be made regarding the legal efficacy of the original hearing conducted by the Board as the same related to the prior Motion of the Respondent for a hearing before "an impartial Board, tribunal or committee," this Court finds as follows:

1. The Respondent produced no evidence of racial discrimination in either the nomination or election of said members of the North Carolina State Board of Dental Examiners nor did the Respondent present or produce any evidence of any pattern of conduct in the nomination and election of the members of the North Carolina State Board of Dental Examiners indicative of racial bias or discrimination;

2. The Respondent neither produced nor presented any evidence indicative of racial bias or discrimination or any evidence of conduct indicative of racial bias or discrimination in the proceedings before the North Carolina State Board of Dental Examiners;

3. The members of the North Carolina State Board of Dental Examiners, as it was constituted at the time of the hearing in question, were duly nominated and elected, as by law provided, without organized effort of the North Carolina Dental Society or any other group or organization;

4. No black dentist has been elected to the North Carolina State Board of Dental Examiners nor has the name of any black dentist been placed into nomination as a candidate for election to said Board;

5. The investigation of suspected irregularities arising from the 1966 E.S.E.A. Dental Program in Charlotte was conducted by a biracial committee of Charlotte dentists, which investigating committee employed a system of investigation whereby the identity of the treating dentists whose records and patients were being examined was not known to said committee members;

6. Prior to the above said 1966 E.S.E.A. Dental Program, there has been some disagreement within the Charlotte Area Fund Committee as between black dentists, on the one hand, and physicians, community leaders, school personnel and white dentists relative to whether children qualifying for treatment under the Program should receive full treatment in a private dental office or whether a part of said treatment should be carried out in a clinic; no members of the North Carolina

State Board of Dental Examiners were involved in any meetings or discussions pertaining to that difference of opinion;

7. The Respondent has failed to produce or present any evidence indicative to the Court that the North Carolina State Board of Dental Examiners acted in any capacity other than that of an "impartial Board, tribunal, or committee," in the conduct of the hearing and of all matters relating thereto.

As to the exceptions of the Respondent alleging that the respective penalties stated in the Orders entered by the Board on the respective dates of May 20, 1971 and September 28, 1971, both of which are identical in substance, violate the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board, this Court finds no merit. At the time of entry of the original Order, N.C.G.S. Section 90-41 provided that the Board, upon finding a licensee guilty of certain specified acts, "may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed." The conditional suspensions ordered by the Board in the original Order were such that the license of the Respondent to practice dentistry in the State of North Carolina could have been suspended for an indefinite period of time either for (1) failure to enroll in and attend the course of dental clinical study required by the Order, or (2) voluntarily withdrawing from or interrupting said course of study. Additionally, the Respondent was subjected to a possible series of suspensions of thirty (30) days each for failure to make certain specified records available to the Board. It is obvious that the license of the

Respondent could have remained in a permanent state of suspension, depending entirely upon his willingness to comply with the Board Order relative to engaging in and completing the course of study prescribed by the Order. Additionally, he could have incurred further separate and cumulative thirty (30) day suspensions of licensure for violation of the requirement that he make specified records available to the Board.

The exception of the Respondent that the Board made no findings to support the punishment imposed by the last entered Order and that the punishment imposed was without standard has no merit for the reason that said Order is based upon the original findings of fact and conclusions of law made by the Board and pursuant to the statutory authority of N.C.G.S. Section 90-41 wherein the period of time for which the Board was authorized to suspend licensure was left to the judgment of the Board.

NOW, THEREFORE, IT IS ORDERED:

1. That the Motion of the Respondent for a hearing before some Board, tribunal, or committee other than the North Carolina State Board of Dental Examiners be, and the same hereby is, denied;

2. That the exception of the Respondent alleging racial bias and discrimination in the nomination and election of the North Carolina State Board of Dental Examiners and alleging racial bias and discrimination in the conduct of the hearing before the Board be, and the same hereby is, overruled;

3. That the exception of the Respondent alleging that the penalty set forth in the Orders entered by the North Carolina State Board of Dental Examiners on May 20, 1971 and September 28, 1971, the latter of which is now effective, violates the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board be, and the same hereby is overruled.

4. That the exception of the Respondent alleging that the Board made no findings to support the punishment imposed by the Order of September 28, 1971 and that the punishment imposed was without standard and violative of the rights of the Respondent be, and the same hereby is, overruled;

5. That the Order of the North Carolina State Board of Dental Examiners suspending the license of the Respondent to practice dentistry in the State of North Carolina for a period of twelve (12) months be, and the same hereby is, affirmed.

Entered this 21st day of October, 1971.

/s/ John R. Friday
Judge Presiding
_____ Civil Session of
Mecklenburg County
Superior Court

EXCEPTION NO. 115.

ORDER OF SUPERIOR COURT 10/21/71 AS TO STINSON

The above entitled cause was originally heard before the North Carolina State Board of Dental Examiners

(hereinafter referred to as "Board"), at the conclusion of which hearing said Board made specific findings of fact, conclusions of law, and entered an Order that the license of Dr. John P. Stinson to practice dentistry in the State of North Carolina be suspended for thirty (30) days for each separate violation of certain specific terms and conditions set forth in said Order. Respondent appealed to Mecklenburg County Superior Court and the matter was heard, on appeal, by Honorable Pilston Godwin, Jr., whereupon Judgment was entered:

a. Affirming various findings of fact and conclusions of law;

b. Determining that the conditional order of license suspension was in excess of the statutory authority given the Board and remanding the proceeding to the Board for entry of an appropriate lawful order; and

c. Requiring that a subsequent judicial hearing be conducted and a determination made regarding the legal efficacy of the original hearing conducted by the Board as the same related to the prior Motion of Respondent for a hearing before "an impartial Board, tribunal or committee."

Upon remand, the Board entered an Order suspending the license of Respondent to practice dentistry in the State of North Carolina for a period of sixty (60) days. From that Order, Respondent appealed to Mecklenburg County Superior Court and noted as exceptions:

a. The latter Order of the Board was violative of various rights of Respondent for the reason that the same constituted an increase in penalty or punishment over that imposed by the original Order; and

b. The rights of Respondent were violated for failure of the Board to afford him an opportunity to appear before said Board and be heard, during reconsideration upon remand, prior to entry of the above said latter Order of the Board.

This cause came before this Court at the August 30, 1971 Civil Session of Mecklenburg County Superior Court upon the last noted appeal of Respondent and for the further purpose of conducting a judicial hearing upon the prior Motion of Respondent as directed by the above said Order entered by Honorable Pilston Godwin, Jr. After receiving the evidence of the Respondent relating to his prior Motion for a hearing before an impartial body and matters touching upon the fairness or lack thereof of the hearing conducted by the Board, this Court entered an Order providing that:

1. This matter be remanded to the Board to the end that the Board give the Respondent an opportunity to appear before said Board, personally or by counsel, for the restricted purpose of presentation of argument upon the matter of penalty or penalties to be imposed upon Respondent by said Board; and that no conclusive Order be entered by said Board until Respondent is afforded said opportunity;

2. The Court retained jurisdiction of this cause and reserved its ruling relative to:

a. The issue raised by the Respondent as to the impartiality of the Board and the conduct of the original hearing before the Board, and

b. The exception of the Respondent to the latter Order entered by the Board alleging that the penalty set

forth in said Order violated the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board.

Subsequent to entry of the above said Order of this Court, and within the time therein allowed, the Board conducted a further proceeding wherein the Respondent and his counsel appeared before the Board and presented arguments relative to penalty or penalties to be imposed upon Respondent. Following said proceeding, and within the time allowed by the above said Order of this Court, the North Carolina State Board of Dental Examiners entertained an Order suspending the license of the Respondent to practice dentistry in the State of North Carolina for a period of sixty (60) days and duly certified said Order to the Clerk of Mecklenburg County Superior Court.

Following entry of the above said Order and certification thereof to the Clerk of Mecklenburg County Superior Court, the Respondent appealed from said Order and noted as exceptions that:

a. The penalty imposed by said Order exceeded the penalty imposed by the initial Order entered by the Board; and

b. The punishment or penalty imposed was not supported by any findings made by the Board and was without standards and thereby violative of the rights of the Respondent.

The exceptions above noted are identical in nature to points upon which this Court has heretofore reserved its ruling.

This cause came on for hearing in Mecklenburg County Superior Court on the 19 day of October, 1971 upon the last noted appeal of the Respondent and for entry of an Order pertaining to those matters upon which rulings have heretofore been reserved, the issues thereby presented to the Court being as follows:

1. A determination of the issue raised by the Respondent as to the impartiality of the North Carolina State Board of Dental Examiners as it was constituted at the time of the original hearing and the impartiality of the conduct of said hearing before the Board; and

2. Decision as to the exception of the Respondent to the Order of the Board entered on May 20, 1971 alleging that the penalty set forth in said Order violated the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board; and

3. Decision as to the exceptions of the Respondent to the Order of the Board entered on September 28, 1971.

RULING OF THE COURT

Upon the evidence offered by the Respondent at the August 30, 1971 Civil Session of the Mecklenburg County Superior Court at which a hearing was conducted to the end that a judicial determination might be made regarding the legal efficacy of the original hearing conducted by the Board as the same related to the prior Motion of the Respondent for a hearing before "an impartial Board, tribunal or committee," this Court finds as follows:

1. The Respondent produced no evidence of racial discrimination in either the nomination or election of

said members of the North Carolina State Board of Dental Examiners nor did the Respondent present or produce any evidence of any pattern of conduct in the nomination and election of the members of the North Carolina State Board of Dental Examiners indicative of racial bias or discrimination;

2. The Respondent neither produced nor presented any evidence indicative of racial bias or discrimination or any evidence of conduct indicative of racial bias or discrimination in the proceedings before the North Carolina State Board of Dental Examiners;

3. The members of the North Carolina State Board of Dental Examiners, as it was constituted at the time of the hearing in question, were duly nominated and elected, as by law provided, without organized effort of the North Carolina Dental Society or any other group or organization;

4. No black dentist has been elected to the North Carolina State Board of Dental Examiners nor has the name of any black dentist been placed into nomination as a candidate for election to said Board;

5. The investigation of suspected irregularities arising from the 1966 E.S.E.A. Dental Program in Charlotte was conducted by a biracial committee of Charlotte dentists, which investigating committee employed a system of investigation whereby the identity of the treating dentists whose records and patients were being examined was not known to said committee members;

6. Prior to the above said 1966 E.S.E.A. Dental Program, there had been some disagreement within the Charlotte Area Fund Committee as between black

dentists, on the one hand, and physicians, community leaders, school personnel and white dentists relative to whether children qualifying for treatment under the Program should receive full treatment in a private dental office or whether a part of said treatment should be carried out in a clinic; no members of the North Carolina State Board of Dental Examiners were involved in any meetings or discussions pertaining to that difference of opinion;

7. The Respondent has failed to produce or present any evidence indicative to the Court that the North Carolina State Board of Dental Examiners acted in any capacity other than that of an "impartial Board, tribunal, or committee," in the conduct of the hearing and of all matters relating thereto.

As to the exceptions of the Respondent alleging that the respective penalties stated in the Orders entered by the Board on the respective dates of May 20, 1971 and September 28, 1971, both of which are identical in substance, violate the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board, this Court finds no merit. At the time of entry of the original Order, N.C.G.S. Section 90-41 provided that the Board, upon finding a licensee guilty of certain specified acts, "may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed." The Board ordered that the license of the Respondent be suspended for thirty (30) days for each separate violation of specific terms and conditions imposed over a six (6) month period of time and that, in the event of suspension or suspensions of the license of the Respondent, the

running of the six-month probationary period would be in abeyance during the period or periods of suspension. The terms of the Order were such that the Respondent could have suffered one or more suspensions of his license to practice dentristry in the State of North Carolina far in excess of the sixty (60) day suspension imposed by the Order entered May 20, 1971 and renewed by the Order of September 28, 1971.

The exception of the Respondent that the Board made no findings to support the punishment imposed by the last entered Order and that the punishment imposed was without standard has no merit for the reason that said Order is based upon the original findings of fact and conclusions of law made by the Board and pursuant to the statutory authority of N.C.G.S. Section 90-41 wherein the period of time for which the Board was authorized to suspend licensure was left to the judgment of the Board.

NOW, THEREFORE, IT IS ORDERED:

1. That the Motion of the Respondent for a hearing before some Board, tribunal, or committee other than the North Carolina State Board of Dental Examiners be, and the same hereby is, denied;

2. That the exception of the Respondent alleging racial bias and discrimination in the nomination and election of the North Carolina State Board of Dental Examiners and alleging racial bias and discrimination in the conduct of the hearing before the Board be, and the same hereby is, overruled;

3. That the exception of the Respondent alleging that the penalty set forth in the Orders entered by the North

Carolina State Board of Dental Examiners on May 20, 1971 and September 28, 1971, the latter of which is now effective, violates the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board be, and the same hereby is overruled;

4. That the exception of the Respondent alleging that the Board made no findings to support the punishment imposed by the Order of September 28, 1971 and that the punishment imposed was without standard and violative of the rights of the Respondent be, and the same hereby is, overruled;

5. That the Order of the North Carolina State Board of Dental Examiners suspending the license of the Respondent to practice dentistry in the State of North Carolina for a period of sixty (60) days be, and the same hereby is, affirmed.

Entered this 21 day of October, 1971.

/s/ John R. Friday
Judge Presiding
_____ Civil Session of
Mecklenburg County Superior Court

EXCEPTION NO. 116.

ORDER OF SUPERIOR COURT 10/21/71 AS TO NASH

The above entitled cause was originally heard before the North Carolina State Board of Dental Examiners (hereinafter referred to as "Board"), at the conclusion of which hearing said Board made and entered findings of fact, conclusions of law, and an Order providing that:

1. The license of Dr. George T. Nash to practice dentistry in the State of North Carolina be suspended, effective twenty (20) days after service of the Order, and to remain suspended until such time as said Respondent was enrolled in a course of clinical dental study specified in the Order; and

2. The Respondent could practice dentistry during his enrollment in said course of study; and, during that time, or for eighteen (18) months, whichever was longer, he was required to make certain records available to the Board upon request; and

3. The license of the Respondent was to be suspended if he voluntarily interrupted the pursuit of the above specified course of study, said license to remain suspended until such time as the course of study was resumed; and

4. The license of the Respondent was to be suspended for thirty (30) days for each separate violation of the above stated requirement that he make certain records available to the Board.

Respondent appealed to Mecklenburg County Superior Court and the matter was heard, on appeal, by Honorable Pilston Godwin, Jr., whereupon Judgment was entered:

a. Affirming various findings of fact and conclusions of law;

b. Determining that the conditional order of license suspension was in excess of the statutory authority given the Board and remanding the proceeding to the Board for entry of an appropriate lawful order; and

c. Requiring that a subsequent judicial hearing be conducted and a determination made regarding the legal efficacy of the original hearing conducted by the Board as the same related to the prior Motion of Respondent for a hearing before "an impartial Board, tribunal or committee."

Upon remand, the Board entered an Order suspending the license of Respondent to practice dentistry in the State of North Carolina for a period of eighteen (18) months. From that Order, Respondent appealed to Mecklenburg County Superior Court and noted as exceptions:

a. The latter Order of the Board was violative of various rights of Respondent for the reason that the same constituted an increase in penalty or punishment over that imposed by the original Order; and

b. The rights of Respondent were violated for failure of the Board to afford him an opportunity to appear before said Board and be heard, during reconsideration upon remand, prior to the entry of the above said latter Order of the Board.

This cause came before this Court at the August 30, 1971 Civil Session of Mecklenburg County Superior Court upon the last noted appeal of Respondent and for the further purpose of conducting a judicial hearing upon the prior Motion of Respondent as directed by the above said Order entered by Honorable Pilston Godwin, Jr. After receiving the evidence of the Respondent relating to his prior Motion for a hearing before an impartial body and matters touching upon the fairness or lack thereof of the hearing conducted by the Board, this Court entered an Order providing that:

1. This matter be remanded to the Board to the end that the Board give the Respondent an opportunity to appear before said Board, personally or by counsel, for the restricted purpose of presentation of argument upon the matter of penalty or penalties to be imposed upon Respondent by said Board; and that no conclusive Order be entered by said Board until Respondent is afforded said opportunity;

2. The Court retained jurisdiction of this cause and reserved its ruling relative to:

a. The issue raised by the Respondent as to the impartiality of the Board and the conduct of the original hearing before the Board, and

b. The exception of the Respondent to the latter Order entered by the Board alleging that the penalty set forth in said Order violated the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board.

Subsequent to entry of the above said Order of this Court, and within the time therein allowed, the Board conducted a further proceeding wherein the Respondent and his counsel appeared before the Board and presented arguments relative to penalty or penalties to be imposed upon Respondent. Following said proceeding, and within the time allowed by the above said Order of this Court, the North Carolina State Board of Dental Examiners entered an Order suspending the license of the Respondent to practice dentistry in the State of North Carolina for a period of twelve (12) months and duly certified said Order to the Clerk of Mecklenburg County Superior Court.

Following entry of the above said Order and certification thereof to the Clerk of Mecklenburg County Superior Court, the Respondent appealed from said Order and noted as exceptions that:

a. The penalty imposed by said Order exceeded the penalty imposed by the initial Order entered by the Board; and

b. The punishment or penalty imposed was not supported by any findings made by the Board and was without standards and thereby violative of the rights of the Respondent.

The exceptions above noted are identical in nature to points upon which this Court has heretofore reserved its ruling.

This cause came on for hearing in Mecklenburg County Superior Court on the 19 day of October, 1971, upon the last noted appeal of the Respondent and for entry of an Order pertaining to those matters upon which rulings have heretofore been reserved, the issues thereby presented to the Court being as follows:

1. A determination of the issue raised by the Respondent as to the impartiality of the North Carolina State Board of Dental Examiners as it was constituted at the time of the original hearing and the impartiality of the conduct of said hearing before the Board; and

2. Decision as to the exception of the Respondent to the Order of the Board entered on May 20, 1971 alleging that the penalty set forth in said Order violated the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board; and

3. Decision as to the exceptions of the Respondent to the Order of the Board entered on September 28, 1971.

RULING OF THE COURT

Upon the evidence offered by the Respondent at the August 30, 1971 Civil Session of the Mecklenburg County Superior Court at which a hearing was conducted to the end that a judicial determination might be made regarding the legal efficacy of the original hearing conducted by the Board as the same related to the prior Motion of the Respondent for a hearing before "an impartial Board, tribunal or committee," this Court finds as follows:

1. The Respondent produced no evidence of racial discrimination in either the nomination or election of said members of the North Carolina State Board of Dental Examiners nor did the Respondent present or produce any evidence of any pattern of conduct in the nomination and election of the members of the North Carolina State Board of Dental Examiners indicative of racial bias or discrimination;

2. The Respondent neither produced nor presented any evidence indicative of racial bias or discrimination or any evidence or conduct indicative of racial bias or discrimination in the proceedings before the North Carolina State Board of Dental Examiners;

3. The members of the North Carolina State Board of Dental Examiners, as it was constituted at the time of the hearing in question, were duly nominated and elected, as by law provided, without organized effort of the North Carolina Dental Society or any other group or organization;

4. No black dentist has been elected to the North Carolina State Board of Dental Examiners nor has the name of any black dentist been placed into nomination as a candidate for election to said Board;

5. The investigation of suspected irregularities arising from the 1966 E.S.E.A. Dental Program in Charlotte was conducted by a biracial committee of Charlotte dentists, which investigating committee employed a system of investigation whereby the identity of the treating dentists whose records and patients were being examined was not known to said committee members;

6. Prior to the above said 1966 E.S.E.A. Dental Program, there has been some disagreement within the Charlotte Area Fund Committee as between black dentists, on the one hand, and physicians, community leaders, school personnel and white dentists relative to whether children qualifying for treatment under the Program should receive full treatment in a private dental office or whether a part of said treatment should be carried out in a clinic; no members of the North Carolina State Board of Dental Examiners were involved in any meetings or discussions pertaining to that difference of opinion;

7. The Respondent has failed to produce or present any evidence indicative to the Court that the North Carolina State Board of Dental Examiners acted in any capacity other than that of an "impartial Board, tribunal, or committee," in the conduct of the hearing and of all matters relating thereto.

As to the exceptions of the Respondent alleging that the respective penalties stated in the Orders entered by

the Board on the respective dates of May 20, 1971 and September 28, 1971, both of which are identical in substance, violate the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board, this Court finds no merit. At the time of entry of the original Order, N.C.G.S. Section 90-41 provided that the Board, upon finding a licensee guilty of certain specified acts, "may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of said Board, will be commensurate with the offense committed." The conditional suspensions ordered by the Board in the original Order were such that the license of the Respondent to practice dentistry in the State of North Carolina could have been suspended for an indefinite period of time either for (1) failure to enroll in and attend the course of dental clinical study required by the Order, or (2) voluntarily withdrawing from or interrupting said course of study. Additionally, the Respondent was subjected to a possible series of suspensions of thirty (30) days each for failure to make certain specified records available to the Board. It is obvious that the license of the Respondent could have remained in a permanent state of suspension, depending entirely upon his willingness to comply with the Board Order relative to engaging in and completing the course of study prescribed by the Order. Additionally, he could have incurred further separate and cumulative thirty (30) day suspensions of licensure for violation of the requirement that he make specified records available to the Board.

The exception of the Respondent that the Board made no findings to support the punishment imposed by the last entered Order and that the punishment imposed was without standard has no merit for the reason that said

Order is based upon the original findings of fact and conclusions of law made by the Board and pursuant to the statutory authority of N.C.G.S. Section 90-41 wherein the period of time for which the Board was authorized to suspend licensure was left to the judgment of the Board.

NOW, THEREFORE, IT IS ORDERED:

1. That the Motion of the Respondent for a hearing before some Board, tribunal, or committee other than the North Carolina State Board of Dental Examiners be, and the same hereby is, denied;

2. That the exception of the Respondent alleging racial bias and discrimination in the nomination and election of the North Carolina State Board of Dental Examiners and alleging racial bias and discrimination in the conduct of the hearing before the Board be, and the same hereby is, overruled;

3. That the exception of the Respondent alleging that the penalty set forth in the Orders entered by the North Carolina State Board of Dental Examiners on May 20, 1971 and September 28, 1971, the latter of which is now effective, violates the rights of the Respondent by exceeding the severity of the penalty imposed by the original Order of the Board be, and the same hereby is, overruled;

4. That the exception of the Respondent alleging that the Board made no findings to support the punishment imposed by the Order of September 28, 1971 and that the punishment imposed was without standard and violative of the rights of the Respondent be, and the same hereby is, overruled;

5. That the Order of the North Carolina State Board of Dental Examiners suspending the license of the Respondent to practice dentistry in the State of North Carolina for a period of eighteen (18) months be, and the same hereby is, affirmed.

Entered this 21st day of October, 1971.

/s/ John R. Friday
Judge Presiding
_____ Civil Session of
Mecklenburg County Superior Court

EXCEPTION NO. 117.

No. 7226SC348 TWENTY-SIXTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

Spring Session 1973

IN THE MATTER OF:
Dr. Reginald A. Hawkins

IN THE MATTER OF:
Dr. John P. Stinson

From Mecklenburg

IN THE MATTER OF:
Dr. George T. Nash

Appeal by respondents from Friday, Judge, 18 October 1971 Session, Superior Court, Mecklenburg County.

This appeal results from the following proceedings:

On 29 June 1966, a letter from the Charlotte-Mecklenburg Board of Education was sent to all dentists practicing in the Charlotte-Mecklenburg area advising that funds had been made available to the Board of Education under the Elementary and Secondary Education Act (Federal) for the purpose of furnishing dental treatment to children from low income families or who were medically indigent. The addressees were requested to advise whether they desired to participate, and a return card was enclosed for that purpose. The letter advised that the parents of the children would be given a choice as to where and by whom their children would be treated. The addressees were further advised that they would be allowed to charge their customary and usual fees and payment would be made promptly upon receipt of their statement for services. Appellants were among the 36 dentists who responded affirmatively. When the screening of the children had been completed, parental consent and choice of location and person to perform the services obtained from the parents, the dentist was sent an authorization letter authorizing him to treat a named child and advising that routine prophylaxis, topical fluoride, X rays, and extractions could be performed without further authorization but that any unusual treatment or procedure "may be approved by the Dental Director". The letter further advised that the work must be completed and statement mailed prior to 25 August 1966, but that no bill should be submitted for work to be done in the future, only completed work. The dentist was asked to indicate on his statement whether the child needed more care at that time.

Following receipt of all the bills, it was suggested to Mr. James T. Burch, employee of the Board of Education and Director of ESEA Activities that the charges of some

of the dentists appeared to be excessive. This suggestion came from a member of the staff of the Health Department, an agency working closely with the Board of Education in this program. Subsequently, this information was passed on to Dr. Craig Phillips, Superintendent of Charlotte-Mecklenburg Schools. Dr. Phillips; Dr. Sherrill, Dental Director; and Dr. Camp, Medical Director of the Health Department, conferred after some preliminary evaluation of the work done had been made. It was decided that the dental services performed on other children in the program should be evaluated. This evaluation was done. The four dentists identified as the result of the preliminary evaluations were called to Dr. Phillips' office for conference. The regional office and Washington office of the Office of Education, upon being informed of the problem, advised Mr. Burch that the problem was "a local responsibility in terms of the administration of the program and in terms of the evaluation of the program." Dr. Phillips then turned to the North Carolina Dental Society. As a result of his discussion with the President of the Dental Society, the request was made that a qualified review committee of dentists be organized to investigate the matter further. This was done and this committee will hereafter be referred to as the "six-man committee". The six-man committee asked that arrangements be made for them to re-examine the children. This was done and in October 1966, 488 children were re-examined at the Dental Clinic at the Central Piedmont Community College. Discrepancies found were reported to the Board of Education.

Subsequently, and on 21 December 1966, the North Carolina State Board of Dental Examiners subpoenaed all of the investigative records and materials then held by the Charlotte-Mecklenburg Board of Education. This action

was taken pursuant to the provisions of G.S. 90-27. The Board of Dental Examiners secured the services of Dr. Clifford M. Sturdevant, Professor of Operative Dentistry, School of Dentistry, University of North Carolina at Chapel Hill; Dr. Fred Charles Fielder, Professor of Operative Dentistry, Meharry Medical College, Nashville, Tennessee; and Dr. Herman Gaskins, Professor of Operative, Dentristry School of Dentistry, Howard University, Washington, D.C. These gentlemen are hereafter referred to as the "reviewing committee" when referred to collectively. The reviewing committee was requested to review the records of the appellants and other dentists participating in the program in conjunction with a review of the report previously filed by the six-man committee. In the process of evaluation by the reviewing committee a system was devised using numbers rather than names of dentists in order that identity of the dentist involved would not be known to the reviewing committee. Following their examination of records and the clinical review of some of the patients, the reviewing committee submitted their report to the Board of Examiners. Their report verified a number of discrepancies attributed to appellants by the six-man committee and exonerated one dentist, Dr. John Reynolds, against whom the six-man committee had listed two discrepancies.

After considering the report filed, the Board of Examiners, acting under the provisions of G.S. 90-41, caused to be served on each of the appellants by the Sheriff of Mecklenburg County notice advising each that "[t]he North Carolina State Board of Dental Examiners has sufficient evidence which, if not rebutted or explained, will justify the said Board in permanently or temporarily revoking or suspending your license to practice dentistry in North Carolina." The notice set out seriatim the general nature of the evidence referred to;

advised that unless hearing was requested within 20 days of service of the notice, action would be taken by the Board which would be final and not subject to judicial review; that if requested, hearing would be held not less than 10 nor more than 30 days from the date of notification; that all proceedings would be in accordance with the provisions of Chapter 150, General Statutes of North Carolina and "under the authority of Chapters 451 and 452 as enacted by the 1967 North Carolina General Assembly," and that the notice was given pursuant to resolutation duly considered and adopted by the Board.

Each appellant filed a "request for hearing and response to notice". They were identical in form and content. Each contained the following motions: (1) that "the hearing be held before an impartial board, tribunal or committee, selected pursuant to the laws of the State of North Carolina and without regard to race, color or national origin"; (2) for a bill of particulars as to the charges against the movant; (3) that the Board furnish the movant with the "names and addresses of all persons, institutions or agencies participating in the bringing and investigation of the charges contained in the Notices (sic) and of the names and addresses of all persons and of exhibits or documents upon whose testimony the Board intends or expects to rely in support of the charges contained in the Notice"; and (4) "for an order allowing the pretrial adverse examination of all persons participating in the bringing or investigation of the charges contained in the Notice or who are expected by the Board to testify in support of the charges and allowing the Respondent to examine all exhibits or documents upon which the Board expects or intends to rely in support of the charges".

The Board then filed a "notice of hearing" in answer to each appellant's "response to notice and request for

hearing". The notice set the hearing for 20 September 1967 at 9:30 a.m. in the United States District Courtroom in Charlotte. The Board in the notice denied the first motion; allowed the motion for a bill of particulars and set out seriatim and with particularity the charges against the particular dentist on whom the notice was served; denied the motion for adverse examination but, on its own motion, allowed each respondent the right to take the depositions of all witnesses pertaining to any matters relevant to the proceeding upon terms and conditions set out therein; granted the motion for examination of documents and exhibits; allowed the third motion set out above; and set out in the notice the information requested.

Upon request of respondents, the hearing was continued from 20 September to 29 November 1967.

Each respondent filed a response to the notice of hearing in which each requested additional particularized information with respect to the charges and objected and excepted to the ruling of the Board denying his original motion that the hearing be held before an impartial board, tribunal or committee.

The matters were consolidated for hearing, and hearing before the Board was begun on 29 January 1968 and concluded on 5 March 1968.

Pleadings were read into the record. Respondents renewed their request for more definite statements of the charges and for hearing before an impartial board or committee. Prior to the taking of evidence the parties entered into certain stipulations as follows: (1) that the transcripts of depositions previously taken on motion of respondents could be received in evidence as the sworn testimony of the deponents, those depositions being the testimony of Dr. Luby T. Sherrill, Dr. A. Craig Phillips,

Mr. James Burch, Dr. J. H. Guion, Dr. Paul Stroup, Jr., Dr. J. H. Rehm, Dr. C. E. Sturdevant, Dr. Fleming Stone, Dr. Worth Williams, Dr. Barry Miller, and Dr. Herman E. Gaskins; (2) that the X rays to be used in the hearing, previously used in the deposition hearing, might be received and introduced into evidence without the necessity of technical authentication; that the X rays were authentic, depicted the mouth and teeth of the person whose name appeared on the X-ray mounting and were in fact, made of the mouth and teeth of the person whose name appeared on the mounting; that the name of the person on the X-ray mounting was the same person named on the bill and statement as having been treated by respondents with the exception of Mary Sanders and Lara Ann Huston as to whom respondents did not make the above stipulation; (3) that certain duplicate original bills might be introduced into evidence in lieu of the originals; (4) that the initial investigation of alleged discrepancies was done by a six-man review committee composed of Dr. Paul Stroup, Dr. J. H. Rhem, Dr. Fleming Stone, Dr. Worth Williams, Dr. Barry Miller, and Dr. J. D. Martin, all dentists practicing in Mecklenburg County; that of that group Dr. Worth Williams and Dr. J. D. Martin are Negroes; that their report was submitted 27 October 1966 and was marked as Exhibit No. 5; (5) that Board's Exhibit No. 6, "Identification of Dentists by Number" shows an identifying list by number of the dentists participating in the ESEA program and that the numbers thereon are the same identification numbers appearing in the report of the six-man review committee; (6) that the report dated 21 February 1967 and supplemented by report and attachments dated 6 March 1967 is the further written report made and submitted by Dr. Fred C. Fielder, Dr. Herman E. Gaskins, and Dr. C. E. Sturdevant, marked as Board's Exhibit No. 7; (7) that the

testimony of Dr. Lindahl, Dr. Sturdevant, Dr. Fielder, and Dr. Gaskins might be taken with their sitting in a panel rather than individually; (8) that the numbers assigned to respondents and to their case records for the six-man investigation purpose was: Dr. Reginald A. Hawkins, 13; Dr. George T. Nash, 22; Dr. John P. Stinson, 29.

Upon the conclusion of the hearing the requirement of G.S. 150-20 was waived, and it was agreed that the Board's decision should be rendered within 60 days after the Board received the written transcript of the proceedings. On 30 July 1968, the decision of the Board relative to each respondent was rendered. As to each respondent, the Board entered findings of fact and conclusions of law and, subject to conditions imposed of pursuing courses of study, ordered the suspension of each respondent's license to practice dentistry in the State of North Carolina. From the orders entered, each respondent filed written exceptions and appealed to the Superior Court, Mecklenburg County, and filed an application for stay. Stay order as to each respondent was entered by Judge Fred Hasty on 15 August 1968.

On 1 February 1971, hearing was had before Judge A. Pilston Godwin at the conclusion of which it was stipulated that order could be entered out of term. On 20 March 1971, Judge Godwin entered an order as to each respondent. The order in each instance affirmed the Board's findings of fact relative to patients treated with the exception of the findings relative to one Treva Watts, a patient of respondent Dr. Nash. It set aside the portion of the order suspending license to practice dentistry upon failure to comply with certain conditions therein imposed upon the basis that, in the opinion of the court, the Board lacked authority to suspend, upon conditions imposed, the penal provisions of its orders entered

pursuant to G.S. 90-41. It remanded the cause to the Board "for reconsideration and for the entry of an appropriate lawful order". It provided that upon service of the order entered upon respondents, each should have the right to appeal to the Superior Court "to the end that a judicial hearing may be conducted and a determination made regarding the legal efficacy of the hearing conducted by the Board as the same relates to the prior motion of the Respondent for a hearing before 'an impartial Board, tribunal or committee.' " The order stayed the effectiveness of any punitive order entered pending determination to be made upon any appeal therefrom. Except as set forth therein, each respondent's exceptions were overruled and the decision of the Board affirmed. The record contains no objection to the entry of any of the orders or any part of any. At the end of each order reproduced in the record a numbered exception appears.

On 20 May 1971, the Board entered an order as to each respondent. The order as to Dr. Hawkins suspended his license for a period of 12 months, and was served on respondent Dr. Hawkins on 26 May 1971. The order as to Dr. Stinson suspended his license for a period of 60 days and was served on him 26 May 1971. The order as to Dr. Nash suspended his license for a period of 18 months and was served on him on 28 May 1971.

On 9 June 1971 each respondent filed notice of appeal and exceptions to the order entered. Respondents contended that the orders entered unconstitutionally imposed increased punishment, that they had been deprived of their right to appear before the Board for further hearing relative to punishment to be imposed, and that no further and additional findings were made by the Board to support the punishment imposed.

On 30 August 1971 a hearing was had before Judge John R. Friday. Respondents presented evidence which

they contended indicated bias, prejudice, or lack of impartiality on the part of the North Carolina State Board of Dental Examiners. This evidence consumes 142 pages of the record. At the conclusion of the hearing, counsel for respondents was asked by the court to "dictate to the Reporter the Issues that you feel arise in this case". Counsel thereupon stated the issues in the case as (1) whether the Board of Dental examiners which conducted the hearings, both initially and on remand, was a fair and impartial tribunal to hear the matter and whether the hearing was conducted in a fair and impartial manner; (2) whether the Board violated the constitutional rights of respondents in failing to allow them to appear and present argument on remand, prior to the imposition of its order; and (3) whether the Board violated the constitutional rights of respondents in imposing a more severe penalty on remand than the Board had previously imposed.

On 2 September 1971, Judge Friday entered an order as to each respondent retaining jurisdiction of the cause for a period of 30 days for determination of the issue raised by respondents as to the impartiality of the North Carolina State Board of Dental Examiners and the conduct of the original hearing before the Board, remanding the causes to the Board "to the sole end that the board shall give the respondent an opportunity to appear before said board, personally or by counsel, for the restricted purpose of presentation of argument upon the matter of penalty or penalties to be imposed upon respondent by said board; and that no conclusive order shall be entered by said board herein until respondent is afforded the above said opportunity"; and reserving determination of respondent's exception as to increased punishment until entry of order by the Board.

On 30 September 1971, after hearing at which respondents and counsel were present in person and

presented argument, the Board entered orders and in each case imposed identical punishment as was imposed in its previous order. Each respondent filed written exceptions and notice of appeal.

The causes were again heard before Judge Friday on 18 October 1971. A transcript of the last hearing before the Board was, upon request of counsel for respondents, made a part of the record. At that hearing, counsel for respondents requested that the record reflect an exception to the ruling of the court with respect to affirming the order of the Board. Counsel for respondents stated further: "Would like for the record to further reflect our specific exceptions to the findings of the Board, Findings of Fact, that were previously set out in the matter heard by Judge Godwin. We would also like for the record to reflect our specific exceptions to the findings of Judge Godwin affirming the findings of the Board, affirming the finding of facts of the Board, and the conclusions of law."

The court entered an order as to each respondent in which he set out the order of the Board, that respondents appealed to the Superior Court; that after hearing the court entered an order affirming the Board's findings of fact and conclusions of law; determined that the conditional order of license suspension was in excess of the Board's statutory authority, remanded the proceeding to the Board for the entry of an appropriate order, and required a subsequent judicial hearing for the determination of respondent's motion for a hearing before an "impartial Board, tribunal or committee"; that on remand the Board entered an order of license suspension; that respondents again appealed noting two exceptions, both alleging violation of constitutional rights; that a hearing was had in Superior Court upon this appeal and evidence taken with respect to the lack of impartiality of the Board; that the court again remanded the proceeding

to the Board for the restricted purpose of allowing respondents to be heard with respect to the penalty or penalties to be imposed and retained jurisdiction and reserved ruling with respect to the issues raised of impartiality and violation of constitutional rights by increased severity of penalty; that the Board heard respondents and entered orders imposing the identical license suspensions previously imposed; that respondents again appealed noting as exceptions the contentions that the penalty imposed exceeded the original penalty and was not supported by any findings made by the Board. The court noted that the issues before it were (1) determination of the issue of impartiality of the Board of Dental Examiners, (2) decision as to the exception alleging that penalty in order of 20 May 1971 violated respondent's constitutional rights by exceeding in severity the penalty imposed by the Board's original order, and (3) failure of the Board to make findings of fact to support punishment imposed. The court found that respondents had failed to present any evidence that the Board of Dental Examiners had acted in any capacity other than that of an "impartial Board, tribunal, or committee" in the conduct of the hearing and of all matters relating thereto, that the penalties of the orders of 28 September 1971 did not violate rights of respondents by exceeding the severity of the penalty imposed by the original order of the Board, that the order of 28 September 1971 was based upon the original findings of fact and conclusions of law and no additional findings were necessary. The court, therefore, overruled respondents' exceptions and affirmed the order of the North Carolina State Board of Dental Examiners. Each respondent appealed. During the entire pendency of this proceeding all orders affecting licensure of respondents have been judicially stayed.

Patton, Starnes and Thompson, by Thomas M. Starnes, for North Carolina State Board of Dental Examiners.

Chambers, Stein, Ferguson and Lanning, by J. LeVonne Chambers, for respondent appellants.

MORRIS, Judge. Respondents bring forward 13 assignments of error based on 117 exceptions. All assignments of error are common to all three respondents.

Assignments of error Nos. 1 and 13 are addressed to the alleged lack of impartiality of the Board of Dental Examiners. Incorporated in respondents' "request for hearing and response to notice" was a motion "that the hearing be held before an impartial board, tribunal or committee, selected pursuant to the laws of the State of North Carolina and without regard to race, color or national origin". The Board denied the motion "for the reason that the North Carolina State Board of Dental Examiners is a lawfully and constitutionally organized agency of the State of North Carolina and is the sole lawful body or agency having jurisdiction of the subject matter of this proceeding."

Although respondents contend that the statute under which this proceeding was brought and conducted is unconstitutional, they do concede the authority given by statute to the Board to conduct the hearing. They urge that they are entitled to a hearing before a fair and impartial group. We certainly are in accord, nor does the Board challenge the correctness of this position. The Board does, however, deny that this right was denied respondents. Respondents contend that the Board was biased from the very beginning to the very end of the proceeding and that prejudice resulted to respondents not only in the weighing of the evidence by the Board but in the institution of the proceeding and in the disposition

made by the Board based on the findings. Respondent Hawkins had been active as a plaintiff in suits challenging the alleged discriminatory practices of the North Carolina Dental Society and Board of Dental Examiners and the Charlotte-Mecklenburg Board of Education. A white dentist was among those against whom discrepancies were listed by the six-man committee, but the reviewing committee found that there were no discrepancies. The members of the Board were selected by vote of the members of the North Carolina Dental Society. These circumstances, say the respondents "demonstrate that the board did not act as a disinterested and impartial body in instituting these proceedings nor could it act as a fair and impartial tribunal to conduct the hearings and to render a disposition of the matter." We are not willing, as respondents apparently would have us do, to say that a mere allegation and statement that prejudice exists is sufficient proof that the proceedings were conducted with a lack of impartiality and fairness. In their brief, respondents point to no evidence in the record indicating bias or partiality, nor does our study of the record reveal any. It is true that prior to the suit of respondent Hawkins against the North Carolina Dental Society [Hawkins v. North Carolina Dental Society, 355 F. 2d 718 (4th Cir. 1966)], the members of the Board of Dental Examiners were elected by the members of the North Carolina Dental Society and that no black dentist was a member of that Society. However, in 1961, G.S. 90-22 was amended to provide that members of the Board of Dental Examiners shall be elected in an election conducted by the Board "in which every person licensed to practice dentistry in North Carolina and residing in North Carolina shall be entitled to vote". G.S. 90-22(b). The statute further provides that each year there shall be elected two members for three-year terms. Nominations

are made by a written petition signed by not less than ten dentists licensed to practice in North Carolina and filed with the Board within the time provided by G.S. 90-22(c)(4). Dr. Hawkins testified that he became a member of the North Carolina Dental Society in May 1966, prior to the time of his participation in the ESEA program resulting in the charges against him. He further testified that he had voted for candidates for the Board of Dental Examiners, that he had never been a candidate for election to the Board, but that he had attempted to become a candidate in 1961 and in 1966 at the June meetings of the Old North State Dental Society. He testified: "I could have found a hundred who were willing to endorse me but because of the difficulty and the costs involved and looking at practical politics, I was deterred from seeking that course. Other black dentists deterred me." The members of the Board were elected by ballots cast by all licensed dentists in North Carolina who cared to vote – not by the North Carolina Dental Society. We find no evidence in the record before us which would indicate any prejudice or bias on the part of any member of the Board toward any of the appellants by reason of the suit brought against the Dental Society or for any other reason.

The proceeding from beginning to end was conducted fairly and impartially. Mr. James T. Burch, who is black, was employed by the Charlotte-Mecklenburg Board of Education and was Director of ESEA activities in 1966. Under his supervision a letter was sent by the Board of Education to all dentists practicing in the Charlotte-Mecklenburg area asking that the addressee advise as to their desire to participate in a program of dental treatment of medically indigent children during the summer of 1966, funds for the program having been made available under the Elementary and Secondary

Education Act (Federal). The respondents, with some 33 other dentists, indicated an interest. The program was fully administered by and under the control of the Charlotte-Mecklenburg Board of Education with the cooperation of the Charlotte-Mecklenburg Health Department. Upon the conclusion of the program of dental treatment, Mr. Burch was advised by an associate working with the program that some of the bills appeared to be excessive. Mr. Burch communicated this information to Dr. Craig Phillips. Dr. Phillips conferred with Dr. Luby Sherrill, Dental Director of the Health Department, and Dr. Camp, Medical Director of the Health Department. Dr. Sherrill and one or more assistants conducted a preliminary investigation and evaluation. They discovered instances of substandard dentistry and discrepancies between treatment apparently rendered and treatment reflected on some of the statements submitted. This was reported by Mr. Burch to Dr. Phillips who, in turn, transmitted the report. Both the State Department of Public Instruction and the Federal Office of Education advised that problems of administration and evaluation of the program were local problems. Dr. Phillips then requested Dr. Homer Guion, President of the North Carolina Dental Society, to appoint a qualified review committee of qualified dentists to investigate the matter further. This was done. The committee was composed of six local dentists, two of whom were black. Mr. Burch met with the committee as a representative of the Board of Education. Mr. Burch assigned numbers to the participating dentists and their statements and records. Evidence from committee members was that never at any time did any member of this committee know the name of any doctor whose work they were reviewing. The records were kept locked up by Mr. Burch and no one saw them. They did not know any names when their

report was submitted. One member of the committee testified that he did not know any names of the doctors involved until he read it in the newspaper. The committee members convened at Central Piedmont College on or about 6 October 1966 where they clinically examined all of the children who had been treated in the program whom Mr. Burch could locate in the school system and have transported to the College. On the same day X rays were made of the teeth of the children who were examined. The chart and X ray of each child was marked with his or her name and an identifying number. Mr. Burch assigned each participating dentist a number. That number was placed in one corner on the outside of the envelope which contained the chart, X ray and statement which pertained to that child. Each time the committee met for joint review, Mr. Burch was present and at the close of the meeting took possession of all the envelopes and retained them in his possession until the next meeting. The committee decided upon those items of substandard dentistry which they would label a discrepancy. There were five discrepancies listed by them. The committee examined 308 of the 601 patients who had been treated by private dentists. The committee reported to Dr. Guion who submitted their report to Dr. Phillips by letter dated 27 October 1966. Thereafter Dr. Phillips conferred several times with each of the respondents with their counsel, and agreement was reached with respect to the amount of payment to be made for the services of each respondent. This concluded the matter insofar as the Board of Education was concerned. On 21 December 1966, the Board of Dental Examiners, by subpoena duly served, obtained all of the records, X rays, reports and related documents pertaining to all the dentists who had participated in the program. Thereafter the Board requested three experts to review the report of

the six-man committee, the postoperative X rays made at the College, and all other documents relating to the four dentists reported as having discrepancies. These three experts, two of whom were black, were Dr. Clifford M. Sturdevant, Dr. Herman E. Gaskins, and Dr. Fred C. Fielder. None of them was a resident of Charlotte. Each was a professor of operative dentistry at a recognized school of dentistry. This review committee reviewed the report of the six-man committee, examined all records pertaining to the four dentists charged with discrepancies, clinically examined 13 of the children in question, and checked random samples of the records of dentists who had not been charged with discrepancies. Their initial report was submitted on 21 February 1967. They exonerated one dentist who had been charged with two discrepancies by the six-man committee. As to respondent Hawkins, they verified 25 of the 38 discrepancies reported by the six-man committee. As to respondent Stinson, they verified 10 of 19 discrepancies reported by the six-man committee. As to respondent Nash, they verified 20 of the 33 discrepancies reported by the six-man committee. The Board, after full hearing, entered its orders finding 13 discrepancies as to Dr. Hawkins, seven as to Dr. Stinson, and 18 as to Dr. Nash. Whenever there appeared any doubt as to whether any charged discrepancy was a discrepancy, the charge was dismissed by the Board. So it appears that no charge was sustained unless it received the unanimous approval of the six-man committee. the review committee, and the Board of Dental Examiners.

The two committees utilized in the procedure totaled nine dentists. Four of them were black. The Board required complete unanimity of opinion in order to include an alleged discrepancy in its findings of fact and conclusions of law. We cannot conceive of a fairer

procedure than was employed here. The respondents were given the benefit of every doubt all the way through. We perceive no bias, no prejudice, and no partiality.

Assignments of error Nos. 9, 12 and 13 encompass appellants' contention that the Board erred in imposing more severe sentences on remand and the court erred in affirming. Appellants urge that the alleged increased penalties violate the rights of respondents as secured to them by the Fourteenth Amendment to the Constitution of the United States and Article I, Section 19, North Carolina Constitution.

G.S. 90-41, in effect at the time of this proceeding, provided that when one is found guilty of acts violative of the statute, "the Board may revoke the license of such person, or may suspend the license of such person for such period of time as, in the judgment of the said Board, will be commensurate with the offense committed . . ."

The Board, in its orders of 30 July 1968, ordered the suspension of each respondent's license to practice dentistry in North Carolina, subject to conditions imposed of pursuing courses of study. The Superior Court entered an order on 20 March 1971 setting aside that portion of each order upon the ground that the Board, under G.S. 90-41, had the authority only to revoke or suspend a license and had no authority to impose conditions. Whether the Board had that authority is not before us. We note that the 1971 General Assembly rewrote G.S. 90-41 to give the Board authority, in addition to revocation and suspension, to "[i]nvoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper."

Respondents contend that North Carolina v. Pearce, 395 U.S. 711, 23 L.Ed. 656, 89 S.Ct. 2072 (1969), is applicable. We do not agree. In *Pearce*, the Court was

concerned with the constitutional limitations upon the imposition of a more severe punishment *after conviction for the same offense upon retrial.* The court held that neither the double jeopardy provision nor the equal protection clause imposes an absolute bar to a more severe sentence upon reconviction but that "[d]ue process of law, then, requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial." We see no factual similarity in *Pearce* and the case *sub judice.* We have no appeal resulting in a new trial. We have here only the remand for the entry of a proper judgment within the authority of the Board. As appellee points out in its brief, the court set aside that portion of the judgment as void not because it was tainted by some error prejudicial to respondents but because the court determined that the Board did not have the legal authority to enter an order of that type. Nor can we say that the order upon remand imposed a more severe penalty. In the case of Dr. Hawkins the suspension was for 12 months; as to Dr. Nash, 18 months; and as to Dr. Stinson, 60 days. However, in the original order of the Board, the suspension in each case could have resulted in permanent suspension or revocation had respondents not complied with the conditions imposed. We hold that the orders entered upon remand do not constitute a deprivation of rights under the Constitution of the United States or the North Carolina Constitution.

By assignment of error No. 6 the respondents contend that the court erred in failing to dismiss this proceeding because of the alleged vagueness and indefiniteness of the statute. Respondents apparently complain of the language "has been guilty of malpractice . . . or has been guilty of willful neglect in the practice of dentistry . . . or has been guilty of any other unprofessional conduct in

the practice of dentistry . . ." We agree with respondents that they are entitled to notice of the conduct which might warrant suspension or revocation. We do not agree that this language is too vague and indefinite to give notice. It is certainly not such that "men of common intelligence must guess at its meaning." Coates v. Cincinnati, 402 U.S. 611, 614, 29 L.Ed. 2d 214, 217, 91 S.Ct. 1686, 1688 (1971); Connally v. General Construction Co., 269 U.S. 385, 391, 70 L.Ed. 322, 328, 46 S.Ct. 126, 127 (1926).

The whole purpose and tenor of Article 2, Chapter 90, of the General Statutes is to protect the public against unprofessional, improper, unauthorized, and unqualified practice of dentistry. The goal is to secure to the people the services of competent, trustworthy practitioners. The licensing by the State, granted only after certain standards of proficiency are met, amounts to the recognition by the State of the licensee as a qualified dentist. The continued holding of the license is taken by the public as indication that those standards are being maintained. The object of both granting and revoking a license is the same – to exclude the incompetent or unscrupulous from the practice of dentistry.

Webster's Third New International Dictionary (1968) defines "malpractice" as, "a dereliction from professional duty whether intentional, criminal, or merely negligent by one rendering professional services that results in injury, loss, or damage to the recipient of those services or to those entitled to rely upon them or that affects the public interest adversely."

In Hazelwood v. Adams, 245 N.C. 398, 95 S.E. 2d 917 (1957), Justice Higgins said:

"One who holds himself out to practice dentistry, by implication agrees to bring to his patient's case a

> fair, reasonable and competent degree of skill and to apply that skill with ordinary care and diligence in the exercise of his best judgment." (p. 401)

The phrase "willful neglect" is certainly a well-known phrase and we cannot perceive that any uncertainty as to its meaning could exist among the members of the dental profession, those to whom the statute applies. The clear meaning of the phrase as applied to the practice of dentistry is a deliberate purpose not to discharge some duty necessary to the proper treatment of the patient.

It is true that the statute does not set out seriatim incidences of unprofessional conduct for which license revocation would lie. In Reyburn v. Minnesota State Board of Optometry, 247 Minn. 520, 78 N.W. 2d 351 (1956), the Court defined "unprofessional conduct" as "conduct which violates those standards of professional behavior which through professional experience have become established, by the consensus of the expert opinion of the members, as reasonably necessary for the protection of the public interest." (pp. 523-524.)

In Kansas State Board of Healing Arts v. Foote, 200 Kan. 447, 436 P. 2d 828 (1968), the Court had before it a statute authorizing the revocation of license to practice medicine for "immoral, unprofessional or dishonorable conduct". There the Court said:

> "It would indeed be difficult, not to say impractical, in carrying out the purpose of the act, for the legislature to list each and every specific act or course of conduct which might constitute such unprofessional conduct of a disqualifying nature. Nor does any such failure leave the statute subject to attack on grounds of vagueness or indefiniteness. Our statute makes no attempt to delineate what acts

> are included in the terms immoral or dishonorable conduct, which are also made grounds for revocation. The determination whether by common judgment certain conduct is disqualifying is left to the sound discretion of the board." (pp. 453-454.)

Statutes which authorize revocation for unprofessional conduct, grossly immoral conduct, incompetency, and other general terms have been held valid in the majority of jurisdictions notwithstanding their generality. For discussion and authorities see Brinkley v. Hassig, 83 F. 2d 351, 355 (10th Cir. 1936); annot., 79 A.L.R. 323, et seq. (1932); 61 Am. Jur., Physicians, Surgeons, § 46, pp. 169-170.

The terms used in our statutes have a well-defined meaning both in the law and the dental profession and are entirely sufficient to give respondents notice of the conduct which would warrant suspension or revocation of their licenses. We hold that the applicable phraseology of G.S. 90-41 is not unconstitutionally vague and indefinite.

Respondents next contend that the proceedings should have been dismissed because the Board lacked jurisdiction over the respondents and the work they performed in the federally financed 1966 summer program out of which the charges arose. This contention is untenable. Respondents rely on the following provision of G.S. 90-29:

> "The following practices, acts, and operations, however, shall be exempt from the provisions of this article:
>
> . . .
>
> (3) The practice of dentistry in the discharge of their official duties by dentists in the United States army, the United States navy, the United States

> public health service, the United States veterans bureau, or other federal agency."

To say the respondents were "in the discharge of their official duties" as employees of a federal agency is simply belying the plain and uncontradicted facts in the record. The record reveals that the respondents were all private practitioners, that they indicated their desire to participate in a program to treat indigent children for their dental needs during the summer of 1966, that the children to be treated had already been screened through the cooperation of the Health Department and dentists employed to do the screening, that the funds for the work were furnished by the Federal Government but the program was administered totally by the Charlotte-Mecklenburg Board of Education through its Director of ESEA activities, that each participating dentist submitted a bill to the Charlotte-Mecklenburg Board of Education for each patient treated, that the services performed were performed by appointment in each dentist's office, where he customarily practiced his profession as a private practitioner. Mr. Burch, the Director of the ESEA program for the Board of Education, testified that after the evaluation of the work had been done, the Board sought advice from the Office of Education in Washington and "[t]hey in turn turned it back to us and said it was a local responsibility in terms of the administration of the program and in terms of the evaluation of the program . . ." At no time were the participating dentists discharging any official duties as dentists for any federal agency. This assignment of error is overruled.

By assignments of error Nos. 3, 4, 10 and 11, respondents bring forward 70 exceptions to the admission or exclusion of evidence. We do not deem it

necessary to set out and discuss these exceptions seriatim, nor do we discuss the question of whether each of these assignments of error presents but a single question for review. Nye v. Development Co., 10 N.C.App. 676, 179 S.E. 2d 795 (1971), cert. denied 278 N.C. 702, 181 S.E. 2d 603 (1971). Suffice it to say that we have examined each of these exceptions and we find no error sufficiently prejudicial to warrant a new trial.

By assignment of error No. 2 respondents contend that error was committed in admitting evidence and making findings with respect to charges brought to the attention of the respondents for the first time. The assignment embraces 15 exceptions. Eight of the exceptions relate to one patient of Dr. Nash. Close examination of the record reveals that the discrepancies included in finding of the Board are substantially the same as the discrepancies listed in the notice to Dr. Nash. This patient was one of 18 patients treated by Dr. Nash with respect to whom both committees and the Board found discrepancies. We have carefully examined all these 15 exceptions, and we find that the findings and the notice are substantially the same, or that the charges with respect to that exception were eliminated from consideration, or that the charges to which the exceptions related were not included in the findings of the Board. This assignment is overruled.

By respondents' remaining assignments of error (Nos. 5, 8 and 13), they contend that the Board and the court erred in failing to dismiss the charges because of the insufficiency of the evidence. Respondents do not contend that the findings of the Board are not supported by competent evidence. This candor is commendable. They do seem to take the position that the Superior Court is to weigh the evidence and make its own independent determination of the matters in dispute as in the case of consent reference. Board of Dental Examiners v. Grady,

268 N.C. 541, 151 S.E. 2d 25 (1966). It is true that at the time of the appeal in *Grady*, G.S. 90-41 required the matter on appeal from the Board of Dental Examiners to be heard in the superior court as in the case of consent references. However the 1967 General Assembly amended G.S. 90-41 and that proviso was deleted. The General Assembly of 1967 included the North Carolina State Board of Dental Examiners in G.S. 150-9, and the scope of review of the Board's decisions is covered by G.S. 150-27. This scope of review was discussed by Justice Parker (later C.J.) in In Re Berman, 245 N.C. 612, 97 S.E. 2d 232 (1957), where he wrote:

> "G.S. 150-27 sets forth the scope of review by the Superior Court of the Board's decision, and states that the Judge shall sit without a jury and may affirm the decision of the agency, or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of a person may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are unsupported by competent, material and substantial evidence in view of the entire record as submitted.
>
> The administrative findings of fact made by the State Board of Opticians, if supported by competent, material and substantial evidence in view of the entire record, are conclusive upon a reviewing court, and not within the scope of its reviewing powers. *Baker v. Varser*, 240 N.C. 260, 82 S.E. 2d 90; 42 Am. Jur., Public Administrative Law, Sec. 211, where great numbers of cases from State and Federal Courts are cited." (pp. 616-617.)

In view of respondents' position, we deem it unnecessary to set out the evidence. Suffice it to say that from our study of this voluminous record we are convinced that every finding of fact entered by the Board was supported by competent, material, and substantial evidence (not disputed by respondents) and that the findings of fact are more than sufficient to support the conclusions of law and judgments thereon.

Both respondents and the Board have been most capably represented at all levels of this proceeding.

Affirmed.

Judges PARKER and VAUGHN concur.

A TRUE COPY
THEODORE C. BROWN, JR.
CLERK OF THE COURT OF APPEALS
OF NORTH CAROLINA

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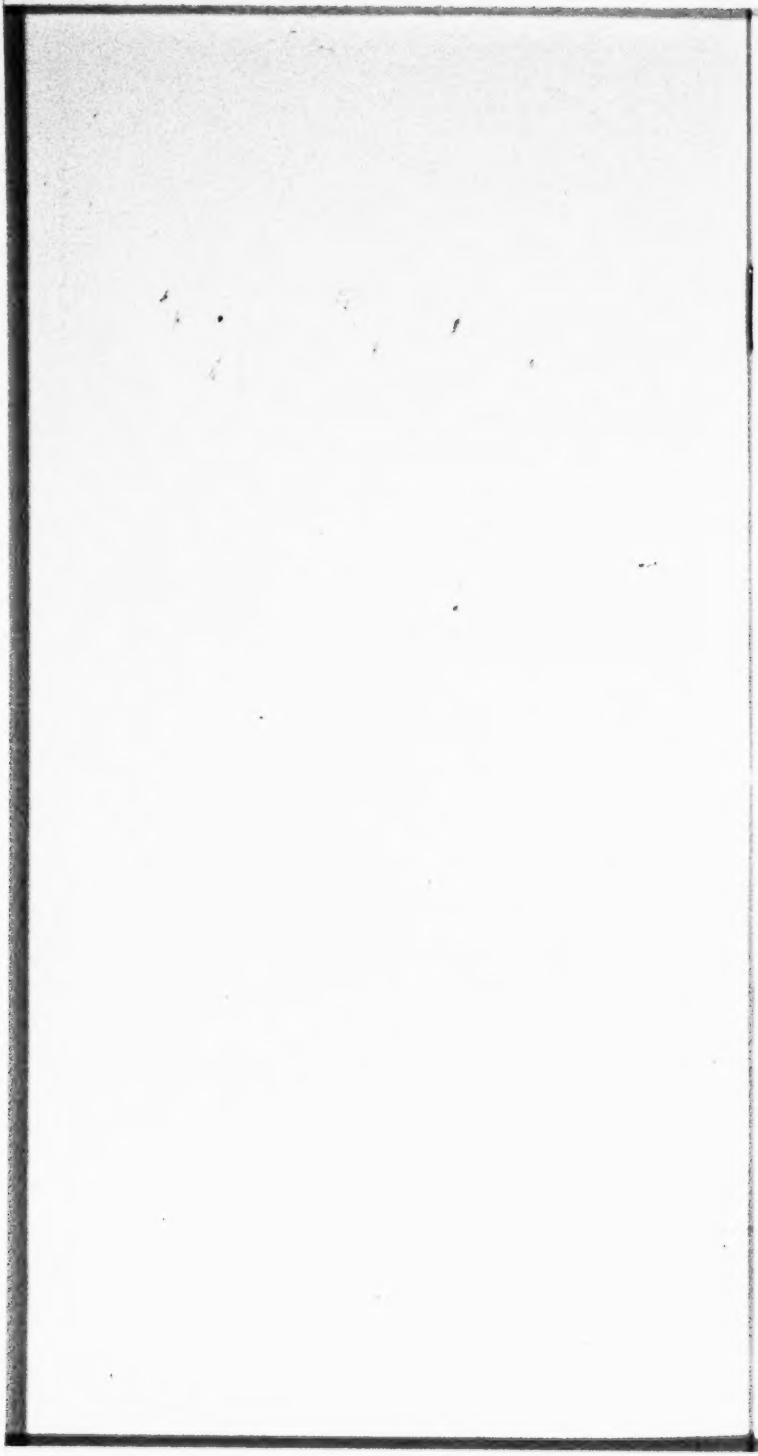
DEPUTY CLERK

February 23, 1973



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-257

DR. REGINALD A. HAWKINS,
DR. JOHN P. STINSON
and DR. GEORGE T. NASH,

Petitioners,

v.

THE NORTH CAROLINA STATE BOARD
OF DENTAL EXAMINERS,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Respondent respectfully prays that the Petition for issuance of a Writ of Certiorari to review the Judgment of the Supreme Court of North Carolina filed herein be denied.

QUESTION PRESENTED

Whether Petitioners were deprived of due process and equal protection of the law in being singled out for disciplinary proceedings by the North Carolina State Board of Dental Examiners because of their race and

their efforts to use the Federal Courts to challenge the racially discriminatory practices of the Dental Examiners and other state agencies involved in these proceedings.

STATEMENT OF THE CASE

The North Carolina Court of Appeals has heretofore affirmed Opinions and Orders of the Superior Court of Mecklenburg County, North Carolina, wherein said Superior Court affirmed Orders of the North Carolina State Board of Dental Examiners suspending the licenses of the Petitioners to practice dentistry in the State of North Carolina as follows:

a. Dr. George T. Nash–18 months;
b. Dr. Reginald A. Hawkins–12 months;
c. Dr. John P. Stinson–60 days.

The North Carolina State Board of Dental Examiners is the sole state agency empowered by statutory law to invoke disciplinary proceedings relative to the revocation or suspension of licenses of dentists to practice in the State of North Carolina. The proceedings out of which this cause arises were instituted by the North Carolina State Board of Dental Examiners on July 29, 1967, and comprehensive hearings were thereafter conducted by the Board. The chronology of subsequent proceedings and appellant reviews is concisely stated in the Opinion of the North Carolina Court of Appeals. (Petitioner's Appendix 193a)

Upon findings of fact made by the Board, the license suspensions to which reference is hereinabove made resulted as provided by the North Carolina General Statutes. As is noted in the Opinion of the North Carolina Court of Appeals, "Respondents do not contend that the findings of the Board are not supported by competent evidence". (Petitioner's Appendix 217a) The

sole thrust of the request for review contained in the Petition for Writ of Certiorari is directed to an allegation of racial discrimination which has absolutely no support in the record. Indeed, the Respondents were afforded the extraordinary benefit of a separate hearing in the North Carolina Trial Court for the sole purpose of presenting evidence that might support claims of racial discrimination. As is reflected by the Order of the Superior Court entered October 21, 1971, Respondents failed to produce any evidence of the racial discrimination which they had alleged. (Petitioner's Appendix 168a)

The total evidentuary record has been comprehensively reviewed and examined by the North Carolina State Court of Appeals and all prior proceedings by the Board and by the Superior Court duly affirmed. The North Carolina Supreme Court refused to further review the matter.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

NO SELECTIVE PROSECUTION WAS EMPLOYED AND PETITIONERS WERE AFFORDED A COMPLETELY FAIR AND IMPARTIAL HEARING, WITHOUT REGARD TO RACE OR OTHER EXTRANEOUS CONSIDERATIONS.

Of grave and immediate concern is the fact that the Petition for Writ of Certiorari filed by Petitioners is replete with erroneous and untruthful statements and statements totally unsupported by any evidence of record. For the comprehensive truth of matters here involved, the Court is urged to carefully review the Opinion of the North Carolina Court of Appeals (Petitioner's Appendix 193a) in comparison with the rather reckless statements and fabrications asserted by Peti-

tioners. It becomes immediately obvious that the sole criteria upon which Petitioners base their arguments for review upon a Writ of Certiorari is an *assumption* that racial discrimination had to exist by virtue of the simple fact that all members of the North Carolina State Board of Dental Examiners were white and all of the Respondents were black. No better rejoinder to such a tenuous assertion may be formulated than that stated in the Opinion of the North Carolina Court of Appeals: "We are not willing, as Respondents apparently would have us do, to say that a mere allegation and statement that prejudice exists is sufficient proof that the proceedings were conducted with a lack of impartiality and fairness. In their Brief, Respondents point to no evidence in the record indicating bias or partiality, nor does our study of the record reveal any."

The North Carolina State Board of Dental Examiners respectfully submits that every effort was made to assure Petitioners a totally fair and impartial proceeding and to assure that their rights were fully protected in every instance. This Respondent relies fully upon the comprehensive Opinion of the North Carolina Court of Appeals and the accuracy of the history of these proceedings as recited therein.

Petitioners claim that the deck was stacked against them in these proceedings. If anything, the deck was stacked in their favor solely by virtue of their race, in consequence of which they were allowed extraordinary latitude and considerations in every respect.

CONCLUSION

Upon the basis of the accurately stated matters set forth in the Opinion of the North Carolina Court of Appeals the Petitioner's Application for issuance of a Writ of Certiorari to review the Decision of the North Carolina Supreme Court should be denied. The jurisdiction of the United States Supreme Court should not be invoked upon the basis of the innuendoes, half-truths, and non-truths recited in the Petition.

Respectfully submitted,

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